

Paid Military Leave for Public Employees in Louisiana

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1.8: USERRA and Other Laws

2.0: Paid Leave

Louisiana law provides 15 days per year of paid military leave for employees of the state and its political subdivisions. The law is codified in the Louisiana Annotated Statutes, Section 42:394:

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

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.

calendar year; and when relieved from duty, they are to be restored to the positions held by them when ordered to duty.³

Note: Section 42:394 does not mention the Coast Guard Reserve. We have heard from a Louisiana fire department chief who has a firefighter who recently joined the Coast Guard Reserve. The fire chief said that because the Coast Guard is not mentioned in section 42:394, the firefighter will not receive paid military leave.⁴

The Meaning of a Day⁵

Many states have different methods of defining what a “day” means in terms of paid military leave. While the statute itself does not provide an answer, the Louisiana Attorney General issued multiple Opinions on the subject:

Civil Code Article 10 provides that "when the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law. The apparent intent of the legislature in enacting this law was to encourage service in the National Guard and the various military reserves, by providing employees of the State and political subdivisions with employment security when their service obligations would otherwise interfere with regular employment schedules and opportunities for advancement.

The fifteen day period in La. R.S. 42:394 coincides with the minimum period of time that a Guardsman is required to drill and engage in field maneuvers annually. While certain reserves' training requirements may call for less than fifteen days, this period is obviously intended to encompass the longest minimum time required for any given U.S. Service branch. Clearly the period of time during which field maneuvers and drilling are to be conducted is measured in "calendar days", i.e., midnight to midnight, a twenty-four hour unit of time. This implicit purpose supports the interpretation of "days" in La. R.S. 42:394 as twenty-four hour "calendar days."

³ LA. REV. STAT. ANN. § 42:394.

⁴ The Louisiana Attorney General made an stated an opinion on this issue: “One apparent deficiency with the policy as written is that the policy does not list all the eligible services contained in LSA-R.S. 42:394. While the policy, in section A, does list the Army Reserve, National Guard, Naval Reserve, and Marine Corps Reserve, the policy fails to list the Air Force Reserve, the Citizens Military Training Corps, and the Civil Air Patrol. We suggest a complete listing of all eligible services in the military leave policy.” As of December 2022, Louisiana has not made that change to the statute.

⁵ This section is drafted by First Lieutenant Tara Buckles. Tara, a life member of ROA, is a First Lieutenant in the Marine Corps. Tara holds a B.S. in Business Administration with a second major in Public Policy from the University of North Carolina at Chapel Hill. She graduated cum laude from the University of Pittsburgh School of Law in May 2022 and sat for the Texas bar exam. After passing the bar exam, she will go on active duty in the Marine Corps. Military title is used for identification only. The views expressed in this article are the views of the author, and not necessarily the views of the Marine Corps, the Department of the Navy, the Department of Defense, or of the U.S. Government.

Civil Code Article 11 provides that when interpreting a law, the words of a statute must be given their "generally prevailing meaning". Without proof of specific legislative intent to the contrary, the most logical conclusion is that La. R.S. 42:394 measures "days" by calendar days, i.e., twenty-four hour time units.

Article 12 provides that "when the words of a law are ambiguous, their meaning must be sought by examining the context in which they occur and the text of the law as a whole". Looking at La. R.S. 42:391 et. seq. as a whole, the use of the term "leave of absence" for a given length of time, expressed in "days", without contrary expression would, according to generally accepted notions, denote a time period measured in "calendar days" of twenty-four hours each.

At least two appellate courts have interpreted the word "days" in statutes governing vacations for police officers and firefighters to mean "calendar days", not "working days", in the absence of proof of legislative intent to the contrary. In *New Orleans Firefighters Association Local 632 v. City of New Orleans*, 260 So.2d 779 (La. App. 4th Cir. 1972), affirmed 269 So.2d 194 (La. 1972), the court interpreted La. R.S. 33:1996 and held that, for purposes of annual vacation periods for municipal firemen, "day" means a calendar day and not a work shift. *Authement v. Davidson*, 366 So.2d 986 (La. App. 1st Cir. 1978) followed the Supreme Court's decision in *New Orleans Firefighters* and held that, absent any expressed intent on the part of the legislature to mean "working days" rather than "calendar days" in La. R.S. 33:2583, dealing with vacation days for Houma police, "days" is to be construed as meaning "calendar days".

This opinion is not in conflict with the previous opinion from this office on this issue. Op. Atty. Gen. 1948-50, p. 285, enclosed. That opinion focuses on the word "periods" and concludes that the statute "clearly does not contemplate one calendar period of fifteen consecutive days". It further concluded that the leave periods in the statute referred to "absence on working days for which the officer or employee shall suffer no loss of pay". There is no reference in the opinion to "working shifts" and the concern of the opinion is not with such eight, ten, twelve, or twenty-four hour shifts, but rather with "working days" in the sense of days on which the employee would otherwise work and be paid, as distinguished from "nonworking days" such as legal holidays and weekends during which the employee would not normally be working.

Therefore, under the rules of interpretation provided by the Civil Code, La. R.S. 42:394 would be interpreted to measure the military leave of absence in twenty-four hour calendar days.⁶

Another point of clarification was provided by a separate Attorney General Opinion regarding work shifts that span the course of two calendar days:

⁶ La. Atty. Gen. Op. No. 1992-60.

Opinion 92-60 concluded that LSA-R.S. 42:394 contemplates "calendar days." When a firefighter works a 24-hour shift from 7:00 a.m. to 7:00 a.m., he has worked on two calendar days. Thus, when he is unavailable to work a 24-hour shift from 7:00 a.m. to 7:00 a.m., he is unavailable for two calendar days. As explained by Fire Chief Robin Hurst of the Baton Rouge Fire Department, a Baton Rouge firefighter typically works six 24-hour shifts from 7:00 a.m. to 7:00 a.m. over the course of two weeks. Therefore, that firefighter would be charged for twelve calendar days of military leave to perform the typical fifteen days of annual training, leaving three additional days of military leave to be utilized for any other military duty arising throughout the year, which conflicts with the firefighter's work schedule.

It is the opinion of this office that the Baton Rouge Fire Department's policy of charging a day of military leave for every calendar day on which a firefighter is unavailable for duty does not violate the express requirement of LSA-R.S. 42:394 that public officers and employees be granted "fifteen days" of military leave. Nor does the policy violate the apparent intent of the Legislature that the fifteen days granted by LSA-R.S. 42:394 encompass the typical fifteen-day period of annual training.⁷

Access the Louisiana 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 Louisiana Revised Statutes for yourself online, for free, at https://www.legis.la.gov/legis/laws_Toc.aspx?folder=75&level=Parent. To more quickly access Section 42:394 discussed in this article, follow this link: <https://www.legis.la.gov/legis/Law.aspx?d=99438> or select "Title 42" from the table of contents and scroll to 42:394.

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⁷ La. Atty. Gen. Op. No. 2001-0391.

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

⁹ You can also contribute on-line at www.roa.org.