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## **Massachusetts Law on Paid Military Leave**

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

**1.8: USERRA and other laws**

**2.0: Paid Leave**

Codified in the Annotated Laws of Massachusetts, Chapter 33, Section 59, Massachusetts law provides as follows concerning paid military leave for employees of the Commonwealth of Massachusetts and its political subdivisions:

(a) An employee of the commonwealth in the service of the armed forces of the commonwealth or a reserve component of the armed forces of the United States shall be entitled to receive pay without loss of ordinary remuneration as a public employee during service in the uniformed services, annual training under section 60 or drills and parades under section 61, not exceeding 40 days in any federal fiscal year, and shall not lose any seniority or any accrued vacation leave, sick leave, personal leave,

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<sup>1</sup> I invite the reader's attention to [www.roa.org/lawcenter](http://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.

<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](mailto: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.

compensation time or earned overtime. For the purposes of this section, “uniformed services” shall have the same meaning as defined in section 13. For the purposes of this subsection, “day” shall mean any 24-hour period regardless of calendar day.

(b) An employee of the commonwealth in the service of the armed forces of the commonwealth under sections 38, 40 or 41 shall be entitled to receive pay without loss of ordinary remuneration as a public employee and shall not lose any seniority or any accrued vacation leave, sick leave, personal leave, compensation time or earned overtime during the first 30 consecutive days of any mission. Thereafter, any such ordinary remuneration shall be reduced by any amount received either from the United States or the commonwealth as base pay for military service performed during the same pay period, and there shall be no loss of any seniority or any accrued vacation leave, sick leave, personal leave, compensation time or earned overtime. National guard duty performed under Title 32 of the United States Code shall not be deemed service in the armed forces of the commonwealth under sections 38, 40 or 41 for the purposes of this section.

(c) An employee of the commonwealth in the armed forces of the commonwealth performing duty under Titles 10 or 32 of the United States Code shall be paid the regular base salary as a public employee for each pay period of such military leave of absence, reduced by any amount received either from the United States or the commonwealth as base pay for military service performed during the same pay period, and shall not lose any seniority or any accrued vacation leave, sick leave, personal leave, compensation time or earned overtime.

(d) An employee of the commonwealth in a reserve component of the armed forces of the United States who is ordered to service for more than 30 consecutive days shall be paid the regular base salary as a public employee for each pay period of such military leave of absence, reduced by any amount received either from the United States or the commonwealth as base pay for military service performed during the same pay period. No such employee shall lose any seniority or accrued vacation leave, sick leave, personal leave, compensation time or earned overtime.

(e) An employee of a county, city or town which, by vote of its county commissioners, city council or inhabitants at a town meeting, has accepted this section or similar provisions of earlier laws, shall be entitled to the benefits and protections of this section or the benefits of the accepted earlier law.

(f) For the purposes of this section, “base pay for military service” shall not include any housing, incentive, bonus, skills pay, allowance or other stipend or benefit paid to the employee for the employee’s military service.<sup>3</sup>

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<sup>3</sup> MASS. ANN. LAWS ch. 33, § 59 (LexisNexis 2022).

This Massachusetts law must be read together with the federal law called the Uniformed Services Employment and Reemployment Rights Act (USERRA). USERRA applies to almost all employers in this country, including the Commonwealth of Massachusetts and its political subdivisions (counties, cities, etc.). The right to unpaid but job-protected military leave under USERRA is essentially unlimited.<sup>4</sup>

USERRA is a floor and not a ceiling on the employment and reemployment rights of persons who are serving or have served in the uniformed services, including the National Guard and Reserve. USERRA does not supersede a state law that provides greater or additional rights.<sup>5</sup> USERRA supersedes a state law that purports to limit USERRA rights or that imposes an additional prerequisite on the exercise of USERRA rights.<sup>6</sup>

### **Eligibility and Meaning of a Day<sup>7</sup>**

Prior versions of the law did not include paid leave for service members on inactive duty training (drilling). It seems that the Massachusetts legislature cleared that up though and now provides for paid leave for drilling periods. Prior versions also had ambiguity regarding the definition of "day." This recent amendment slightly clears up that ambiguity by defining day as a "24 hours period." However, it does not clarify whether those paid days include weekends and other days off when the service member would not be working their civilian job. The Appeals Court of Massachusetts (the second highest court in the state) ruled on a case in 2000 where they said that the days included weekends and other days off.<sup>8</sup> In practice, that would mean that if Cpl. Smith is called up for one week, it would count as seven of his allowed days; the fact that two were for weekend days when he would not be expected to work at his civilian job does not matter.

### **Access the Law of Massachusetts 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 Massachusetts General Laws for yourself online, for free, at <https://malegislature.gov/Laws/GeneralLaws>. To access Chapter 33 Section 59 discussed in this article, follow the link above, select "Part 1:

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<sup>4</sup> See 38 U.S.C. 4312(h).

<sup>5</sup> 38 U.S.C. 4302(a).

<sup>6</sup> 38 U.S.C. 4302(b).

<sup>7</sup> This section is written 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.

<sup>8</sup> *Glass v. City of Lynn*, 729 N.E.2d 1136 (2000).

Administration of the Government" → "Title V Militia" → "Chapter 33 Militia" → "Section 59". You also can follow this direct link:  
<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleV/Chapter33/Section59>.

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<sup>9</sup> Congress recently established the United States Space Force as the 8<sup>th</sup> uniformed service.

<sup>10</sup> You can also contribute on-line at [www.roa.org](http://www.roa.org).