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Paid Military Leave for Public Employees in Missouri

By CAPT Samuel F. Wright, JAGC, USN (Ret.)²

1.18: USERRA and Other Laws

2.0: Paid Leave

Missouri Revised Statutes, Section 105.270 provides as follows concerning the right to paid military leave for employees of the state and its political subdivisions:

1. All officers and employees of this state, or of any department or agency thereof, or of any county, municipality, school district, or other political subdivision, and all other public employees of this state who are or may become members of the National Guard or of any reserve component of the Armed Forces of the United States, shall be entitled to leave of absence from their respective duties, without loss of time, pay, regular leave, impairment of efficiency rating, or of any other rights or benefits, to which otherwise entitled, for all periods of military services during which they are engaged in the

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.

performance of duty or training in the service of this state at the call of the governor and as ordered by the adjutant general without regard to length of time, and for all periods of military services during which they are engaged in the performance of duty in the service of the United States under competent orders for a period not to exceed a total of one hundred twenty hours in any federal fiscal year.

2. Before any payment of salary is made covering the period of the leave the officer or the employee shall file with the appointing authority or supervising agency an official order from the appropriate military authority as evidence of such duty for which military leave pay is granted which order shall contain the certification of the officer or employee's commanding officer of performance of duty in accordance with the terms of such order.

3. No member of the organized militia shall be discharged from employment by any of the aforementioned agencies because of being a member of the organized militia, nor shall he be hindered or prevented from performing any militia service he may be called upon to perform by proper authority nor otherwise be discriminated against or dissuaded from enlisting or continuing his service in the militia by threat or injury to him in respect to his employment. Any officer or agent of the aforementioned agencies violating any of the provisions of this section is guilty of a misdemeanor.

4. Notwithstanding the provisions of any other administrative rule or law to the contrary, any person entitled to military leave pursuant to the provisions of subsection 1 of this section shall only be charged military leave for any hours which that person would otherwise have been required to work had it not been for such military leave. The minimum charge for military leave shall be one hour and additional charges for military leave shall be in multiples of the minimum charge.³

Also relevant to Missouri state employee's reemployment rights is Section 41.942:

1. Notwithstanding the provisions of subsection 1 of section 105.270, any officer or employee of this state, or of any department or agency of this state, or of any county, municipality, school district or other political subdivision, and any other public employee of this state, who is or may become a member of the National Guard or of any reserve component of the Armed Forces of the United States and who is engaged in the performance of duty in the service of the United States under competent orders for an extended and indefinite period of time, shall be entitled to leave of absence from his respective duties as a public officer or employee until such military service is completed without loss of position, seniority, accumulated leave, impairment of performance appraisal, pay status, work schedule including shift, working days and days off assigned to the officer or employee at the time leave commences, and any other right or benefit

³ MO. REV. STAT. § 105.270 (2022).

to which the officer or employee is entitled, and no retirement benefit shall be diminished or eliminated because of such service.

2. The officer or employee shall file with the appointing authority or supervising agency an official order from the appropriate military authority as evidence of such duty for which the leave of absence is granted.⁴

Reading these two sections together, it is possible to say that employees of the State of Missouri and its political subdivisions receive 120 hours (three 40-hour workweeks) of *paid military leave*. After the employee has exhausted his or her entitlement of paid leave, the employee has the right to unpaid but job-protected military leave under section 41.942 and under the federal law called the Uniformed Services Employment and Reemployment Rights Act (USERRA).

The meaning of a Day⁵

Neither the Missouri courts nor the state legislature has clearly defined how to calculate the 120 hours of paid leave service members are entitled to. However, the Attorney General has opined that “an agency, in calculating the amount of military leave to which a state employee is entitled, should include all days from the time of the employee's departure until the time of his or her return, regardless of whether or not the employee was scheduled to work”.⁶ This means that the 120 hours includes weekends and other days off. For example, if Cpl. Smith is called up for one week, it counts as seven of his seventeen days. The fact that two of the days he was gone for were weekend days, for which he would receive no compensation, does not matter.

Access the Missouri Statutes 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 Missouri Revised Statutes for yourself online, for free, at <https://revisor.mo.gov/main/Home.aspx>. From there, you can easily navigate to Sections 105.270 and 41.942. For Section 105.270, select “Chs. 103-110” → “105” → “105.270 Leave of absence to perform military duties...”. For Section 41.942, select “Chs 40-44” → “41 Military Forces” → “41.942 Leave of absence without loss of status or benefits...”

⁴ MO. REV. STAT. § 41.942 (2022).

⁵ This section was added by Gavriel Swerling, an ROA Service Members Law Center Associate. He is in his third year at the University Of Maryland School Of Law and is a First Lieutenant in the Marine Corps Reserve. After he graduates from law school and passes the Maryland bar exam, he will go on active duty in the Marine Corps, as a judge advocate, for at least four years. Thank you to RADM James J. Carey and the Washington Scholars for sending him our way. *The views expressed in this article do not represent the Maryland Law School or the Marine Corps.

⁶ Op.Atty.Gen. No. 92-88, Rice, 1988 Mo. AG LEXIS 24.

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This article is one of 2,300-plus “Law Review” articles available at www.roa.org/lawcenter. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

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.

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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
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⁷ Congress recently established the United States Space Force as the 8th uniformed service.

⁸ You can also contribute on-line at www.roa.org.