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Paid Military Leave for Public Employees in Mississippi

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

Mississippi law provides as follows concerning military leave for employees of the state and its political subdivisions, codified in the Mississippi Code at Section 31-1-21:

(a) All officers and employees of any department, agency, or institution of the State of Mississippi, or of any county, municipality, or other political subdivision, who shall be members of any of the reserve components of the Armed Forces of the United States, or former members of the service of the United States discharged or released therefrom under conditions other than dishonorable, shall be 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 shall be ordered to duty to participate in training at encampments, field exercises, maneuvers, outdoor target practice, or for other exercises, for periods not to exceed fifteen (15) days, and all such officers and employees shall for such periods in excess of fifteen (15) days, be entitled to leave of

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.

absence from their respective duties without loss of time, annual leave, or efficiency rating until relieved from duty, and shall when relieved from such duty, be restored to the positions held by them when ordered to duty, or a position of like seniority, status and pay; provided that such person: (1) when discharged or released from the armed forces shall have received a certificate of satisfactory completion of service, (2) shall be still qualified to perform the duties of such position, (3) shall make application for re-employment within ninety (90) days after June 1, 1966, within ninety (90) days after such person is relieved from such training and service or released from hospitalization for a period of not more than one (1) year for causes attributable to such services. Any person restored to a position under the above provisions shall not be discharged from such position without cause within (1) year after restoration. The fact that there has been a change of administration affecting any position with the State of Mississippi, or any county, city, town, political subdivision, or any state institution thereof shall in no manner affect or deny to such person his former position, and regardless of any limitation on the number of employees, such person shall be re-employed. The provisions of this section do not apply to any officer elected by the vote of the electors of the state, county, municipality, or political subdivisions, when the statutory or constitutional term of the office has expired upon the discharge of such person from military service, but this section does grant re-employment rights to all other officers and employees of the State of Mississippi, or of any county, municipality, or political subdivision when ordered to military duty.

(b) In the event the persons referred to in the foregoing subsection are not reinstated, as therein required, upon application by any such person to the county attorney of the county in which he was employed, or to the district attorney of the district in which he was employed, such attorney applied to shall act as the attorney for such person and shall institute such action as may be necessary to enforce compliance with the provisions of said subsection, and no fees or court costs shall be taxed against the person applying for benefits thereunder.

(c) Insofar as any of the provisions of this section are inconsistent with the provisions of any other law, the provisions of this section shall be considered controlling, and any other acts or parts of acts in conflict herewith are hereby repealed insofar as they are in conflict with this section.³

This provision of Mississippi law must be read together with the federal law called the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Congress enacted USERRA in 1994 as a long-overdue update and rewrite of the Veterans' Reemployment Rights Act (VRRA), which was originally enacted in 1940.⁴ The federal

³ Miss. Code Ann. § 31-1-21 (2022).

⁴ Please see Law Review 15067 (August 2015) for a detailed discussion of the history of the federal reemployment statute.

reemployment statute has applied to the Federal Government and to private employers since 1940. It was amended in December 1974 to make the law apply also to the states and their political subdivisions (counties, cities, school districts, etc.). The most recent amendment to section 33-1-21 was in March 1974, nine months before Congress made the federal law applicable to state and local governments.

USERRA is a floor and not a ceiling on the rights of veterans and Reserve and National Guard personnel. USERRA does not supersede a state law that gives veterans and Reserve/Guard personnel *greater or additional rights*.⁵ USERRA supersedes a state law that purports to limit USERRA rights or that imposes an additional prerequisite on the exercise of USERRA rights.⁶

USERRA provides for *unpaid but job-protected military leave*. A state law that provides a limited period of paid military leave provides greater or additional rights and is not superseded. Section 33-1-21 provides for 15 days of *paid military leave*, and thus this section is not superseded by the federal law.

Other provisions of section 33-1-21 are less generous than USERRA and thus are superseded by the federal law. This makes these other provisions essentially irrelevant.

The Supremacy Clause of the United States Constitution provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.⁷

Meaning of a Day⁸

Neither the Mississippi courts nor legislature have clearly defined the meaning of a “day” for the purpose of this law. There are, however, several Attorney General opinions on the matter. The Attorney General has opined that a service member is entitled to 15 working, not calendar days, of leave.⁹ For example, if Col. Smith is called up for an entire week of training, but only

⁵ 38 U.S.C. 4302(a).

⁶ 38 U.S.C. 4302(b).

⁷ U.S. Const. art. VI, cl. 2. Yes, it is capitalized just that way, in the style of the late 18th Century.

⁸ 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.

⁹ Op.Atty.Gen. No. 2006-00006, Fox, March 17, 2006, 2006 WL 1184456.

works Monday-Friday, he will only use five of his fifteen days of paid leave. Any weekends and other days off that Col. Smith spends on active or inactive duty do not count towards the 15 days of paid leave he is entitled to. The Attorney General has also opined that a day constitutes only one eight hour work shift.¹⁰ Therefore, a firefighter would be charged three days for each 24-hour shift he misses due to military obligations.

Access the Mississippi 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 Mississippi Code for yourself online, for free, through LexisNexis by following the link at <https://www.sos.ms.gov/communications-publications/mississippi-law>. If you are a lawyer with an existing LexisNexis account, you will have to log out of your account to follow this link. To more access Section 31-1-21 discussed in this article, select “Title 33. Military Affairs” → “Chapter 1. Definitions and General Provisions Relating to the Military Forces” → “Section 31-1-21. Officers and employees granted leave.”

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¹⁰ Op.Atty.Gen. No. 2007-00147, Odom, March 23, 2007, 2007 WL 1229262.

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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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¹¹ Congress recently established the United States Space Force as the 8th uniformed service.

¹² You can also contribute on-line at www.roa.org.