

**NH-2013-LV<sup>1</sup>**  
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**(checked December 2022 – no changes)**

## **Paid Military Leave for Public Employees in New Hampshire**

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

1.18: USERRA and Other Laws

2.0: Paid Leave

The New Hampshire Revised Statutes, Section 112:9 provides paid leave for state employees as follows:

- I. Any regular employee of the state of New Hampshire who is a member of any reserve component of the armed forces of the United States or of this state shall, upon request, be entitled to not more than 15 days leave of absence with pay in any one training year for the purpose of engaging in military drill, training, or other temporary duty under military or naval authority. The provisions of this section shall not apply to any such employee who has been inducted or has enlisted in active service in the armed forces of the United States.

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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.

II. Any regular employee of the state of New Hampshire who uses 15 days leave of absence under paragraph I shall, in addition, be entitled to up to 30 days of partial pay, as defined in RSA 110-B:37, IV(a), for any additional military drill or training under military or naval authority.<sup>3</sup>

The New Hampshire Revised Statutes, Section 112:10 provides optional paid leave for employees of political subdivisions, at the discretion of the subdivision, as follows:

All political subdivisions of the state are hereby empowered and authorized to grant an annual military leave, with or without pay or with partial pay, to employees of such political subdivisions, in conformity with the provisions of RSA 112:9.<sup>4</sup>

### **Meaning of “days”<sup>5</sup>**

This statute leaves some ambiguity in terms of how 15 days paid leave is to be interpreted since it does not state whether an employee must use a paid day for a day they otherwise would not be working at their civilian job. However, looking at the legislative history of the statute, a 1967 amendment substituted 15 days leave for “fifteen consecutive calendar days”. This implies that at one point in time the servicemember had to take a paid leave day for a day they otherwise would not be working, and the legislature wanted to change that. For example, if Cpl. Smith is drilling from December 1 – December 7, two days of which are weekend days when Cpl. Smith would not be working her civilian job, she could take 5 days paid leave instead of 7.

The statute also does not define what a “day” is. Some states have decided that it means a calendar day, others have found it to mean a 24 hour period. As of December 2022, the New Hampshire legislature has not addressed this, there have been no New Mexico court cases questioning it, and no New Mexico Attorney General Opinions providing clarification.<sup>6</sup> This issue most often arises in cases involving firefighters or other employees who work 24 hour shifts, however it seems this has not yet come up in New Hampshire.

### **Access the New Hampshire Revised 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

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<sup>3</sup> N.H. REV. STAT. ANN. § 112:9 (LexisNexis 2022).

<sup>4</sup> N.H. REV. STAT. ANN. § 112:10 (LexisNexis 2022).

<sup>5</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.

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 New Hampshire Revised Statutes for yourself online, for free, at

<http://www.gencourt.state.nh.us/rsa/html/nhtoc.htm>. To access Sections 112:9 and 112:10 discussed in this article, select “Title VIII: Public Defense and Veterans’ Affairs” → “Title 112: Public Officers or Employees, or Persons in Private employment Entering Armed Forces of the United States; Military Leave” → Select the relevant section. For direct access to 112:9: <http://www.gencourt.state.nh.us/rsa/html/VIII/112/112-9.htm>. For direct access to 112:10: <http://www.gencourt.state.nh.us/rsa/html/VIII/112/112-10.htm>.

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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.

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<sup>7</sup> Congress recently established the United States Space Force as the 8<sup>th</sup> uniformed service.

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<sup>8</sup> You can also contribute on-line at [www.roa.org](http://www.roa.org).