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Paid Military Leave for Public Employees in New Mexico

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

1.18: USERRA and Other Laws

2.0: Paid Leave

New Mexico Annotated Statutes, Section 20-4-7 provides as follows concerning paid military leave for employees of the state and its political subdivisions:

All state, county, municipal, school district and other public employees who are members of organized units of the army or air national guard or army, air force, navy, marine or coast guard reserves shall be given not to exceed fifteen working days' military leave with pay per federal fiscal year when they are ordered to duty for training, such leave to be in addition to other leave or vacation time with pay to which such employees are otherwise entitled. The governor may grant any member of the national guard or reserves who is a state employee additional military leave with pay in excess 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.

that allowed above, not to exceed fifteen working days per federal fiscal year, for periods of active duty for training when he deems that such training will benefit the state by enabling that employee to better perform the duties required in his state occupation.³

Meaning of “working days”⁴

While this section of the statute makes it clear that service members are only to be charged for days they were actually working (i.e. not weekends or other days they would otherwise have off despite their military service), the statute does leave some ambiguity in terms of what a “working 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 Mexico legislature has not addressed this, there have been no New Mexico court cases questioning it, and no New Mexico Attorney General Opinions providing clarification.⁵ 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 Mexico.

Access the New Mexico Annotated 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 New Mexico Annotated Statutes for yourself online, for free, at

https://nmonesource.com/nmos/nmsa/en/nav_date.do. To access Section 20-4-7 discussed in this article, select “Chapter 20 Military Affairs” → Select the drop down for “Article 4 National Guard” → Select “20-4-7 Military leave for national guard and reserves.”

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³ N.M. Stat. Ann. § 20-4-7 (LexisNexis 2022).

⁴ 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.

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.

If you are now serving or have ever served in any one of our nation’s eight⁶ uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20 or \$450 for a life membership. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448.

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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⁶ Congress recently established the United States Space Force as the 8th uniformed service.

⁷ You can also contribute on-line at www.roa.org.