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Paid Military Leave for Public Employees in Ohio

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1.8: USERRA and Other Laws

2.0: Paid Leave

The Ohio Revised Code, Section 5923.05 provides as following concerning paid military leave for employees of the State of Ohio and its political subdivisions:

(A)

(1) Permanent public employees who are members of the Ohio organized militia or members of other reserve components of the armed forces of the United States, including the Ohio national guard, are entitled to a leave of absence from their respective positions without loss of pay for the time they are performing service in the uniformed services, for periods of up to one month, for each

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.

federal fiscal year in which they are performing service in the uniformed services.

(2) As used in this section:

(a) "Federal fiscal year" means the year beginning on the first day of October and ending on the thirtieth day of September.

(b) "Month" means twenty-two eight-hour work days or one hundred seventy-six hours, or for a public safety employee, seventeen twenty-four-hour days or four hundred eight hours, within one federal fiscal year.

(c) "Permanent public employee" means any person holding a position in public employment that requires working a regular schedule of twenty-six consecutive biweekly pay periods, or any other regular schedule of comparable consecutive pay periods, which is not limited to a specific season or duration. "Permanent public employee" does not include student help; intermittent, seasonal, or external interim employees; or individuals covered by personal services contracts.

(d) "State agency" means any department, bureau, board, commission, office, or other organized body established by the constitution or laws of this state for the exercise of any function of state government, the general assembly, all legislative agencies, the supreme court, the court of claims, and the state-supported institutions of higher education.

(e) "Service in the uniformed services" means the performance of duty, on a voluntary or involuntary basis, in a uniformed service, under competent authority, and includes active duty, active duty for training, initial active duty for training, inactive duty for training, full-time national guard duty, and performance of duty or training by a member of the Ohio organized militia pursuant to Chapter 5923. of the Revised Code. "Service in the uniformed services" includes also the period of time for which a person is absent from a position of public or private employment for the purpose of an examination to determine the fitness of the person to perform any duty described in this division.

(f) "Uniformed services" means the armed forces, the Ohio organized militia when engaged in active duty for training, inactive duty training, or full-time national guard duty, the commissioned corps of the public health service, and any other category of persons designated by the president of the United States in time of war or emergency.

(g) "Public safety employee" means a permanent public employee who is employed as a fire fighter or emergency medical technician.

(B) Except as otherwise provided in division (D) of this section, any permanent public employee who is employed by a political subdivision, who is entitled to the leave provided under division (A) of this section, and who is called or ordered to the uniformed services for longer than a month, for each federal fiscal year in which the employee performed service in the uniformed services, because of an executive order issued by the president of the United States, because of an act of congress, or because of an order to perform duty issued by the governor pursuant to section 5919.29 of the Revised Code is entitled, during the period designated in the order or act, to a leave of absence and to be paid, during each monthly pay period of that leave of absence, the lesser of the following:

(1) The difference between the permanent public employee's gross monthly wage or salary as a permanent public employee and the sum of the permanent public employee's gross uniformed pay and allowances received that month;

(2) Five hundred dollars.

(C) Except as otherwise provided in division (D) of this section, any permanent public employee who is employed by a state agency, who is entitled to the leave provided under division (A) of this section, and who is called or ordered to the uniformed services for longer than a month, for each federal fiscal year in which the employee performed service in the uniformed services, because of an executive order issued by the president of the United States, because of an act of congress, or because of an order to perform duty issued by the governor pursuant to section 5919.29 or 5923.21 of the Revised Code is entitled, during the period designated in the order or act, to a leave of absence and to be paid, during each monthly pay period of that leave of absence, the difference between the permanent public employee's gross monthly wage or salary as a permanent public employee and the sum of the permanent public employee's gross uniformed pay and allowances received that month.

(D) No permanent public employee shall receive payments under division (B) or (C) of this section if the sum of the permanent public employee's gross uniformed pay and allowances received in a pay period exceeds the employee's gross wage or salary as a permanent public employee for that period or if the permanent public employee is receiving pay under division (A) of this section.

(E) Any political subdivision of the state, as defined in section 2744.01 of the Revised Code, may elect to pay any of its permanent public employees who are entitled to the leave provided under division (A) of this section and who are called or ordered to the uniformed services for longer than one month, for each federal fiscal year in which the employee performed service in the uniformed services, because of an executive order issued by the president or an act of congress, such payments, in addition to those

payments required by division (B) of this section, as may be authorized by the legislative authority of the political subdivision.

(F) Each permanent public employee who is entitled to leave provided under division (A) of this section shall submit to the permanent public employee's appointing authority the published order authorizing the call or order to the uniformed services or a written statement from the appropriate military commander authorizing that service, prior to being credited with that leave.

(G) Any permanent public employee of a political subdivision whose employment is governed by a collective bargaining agreement with provision for the performance of service in the uniformed services shall abide by the terms of that collective bargaining agreement with respect to the performance of that service, except that no collective bargaining agreement may afford fewer rights and benefits than are conferred under this section.³

Section 5923.05 must be read together with the federal law called the Uniformed Services Employment and Reemployment Rights Act (USERRA).⁴ USERRA applies to state and local governments, private employers, and the Federal Government. USERRA accords the right to unpaid but job-protected military leave to persons who have left civilian jobs to perform voluntary or involuntary service in the uniformed services, as defined by USERRA.

USERRA is a floor and not a ceiling on the employment and reemployment rights of veterans and Reserve and National Guard personnel. USERRA does not supersede a state law that provides 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.

Ohio also provides for a continuation or reactivation of health benefit coverage for state employees and their dependents while on a leave of absence during active duty:

Notwithstanding sections 1751.54, 3923.381, and 3923.382 of the Revised Code, the state and any agency, authority, commission, or board of the state, at the request of any person who is employed by the state or any of those entities who is called or ordered to duty as described in division (C) of section 5923.05 of the Revised Code, or at the request of the spouse or dependent of such a person, shall continue or reactivate the health, medical, hospital, dental, vision, and surgical benefits coverage of the person, whether provided by an insurance company, health insuring corporation, or other health plan or entity, for the duration of the time the person is on duty as described in that division. The person, or the spouse or dependent of the person, who requests the continuation or reactivation of the coverage and the employing state or state entity are

³ OHIO REV. CODE ANN. § 5923.05 (LexisNexis 2022).

⁴ 38 U.S.C. 4301-35.

⁵ 38 U.S.C. 4302(a).

each liable for payment of the same costs for the coverage as if the person were not on a leave of absence.⁶

Access the Ohio Revised 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 Ohio Revised Code for yourself online, for free, at <https://codes.ohio.gov/ohio-revised-code>. To access Section 5923.05 discussed in this article, select “Title 59 Veterans-Military Affairs” → “Chapter 5923 Organized Militia” → “5923.05 Paid military leave for permanent public employees.”

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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.

If you are now serving or have ever served in any one of our nation’s eight⁷ 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.

⁶ OHIO REV. CODE ANN. § 5923.051 (LexisNexis 2022).

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

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
Washington, DC 20002⁸

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