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(updated December 2022 – no changes to law)

Differential Pay for Employees in Rhode Island

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

1.8: USERRA and Other Laws

2.0: Paid Leave

Rhode Island General Laws, Section 30-6-5 provides as follows concerning differential pay for state employees who have been called to active duty:

(a) Employees of a state agency, who are eligible as defined within, may qualify for a military pay differential, hereafter also referred to as a “differential”. Such differential shall consist of the difference between the base pay for state employment that the state employee would have received if not on active military duty and the military pay that the employee on active military duty did receive, for the same time period. The differential does not include the payment of overtime in state employment.

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.

(b) In order to be eligible for a military pay differential, a recipient must be a member of the National Guard or a Reserve component of the United States Armed Forces who is currently mobilized in support of a Presidential reserve call-up for active military duty, who at the time of being called for active military duty was an employee of a state department who otherwise qualifies for a military pay differential, as described above.

(c) The state department where the state employee worked when called to active duty shall periodically pay every employee who qualifies for a military pay differential. The first such payment shall be paid to eligible state employees for military pay differentials between July 1 and September 30. Such stipends shall be calculated for each three-month (3) period thereafter, but shall terminate upon the employee's return from active duty or after the employee has received the differential for one year, whichever comes first.

(d) The director of the department of administration shall be responsible for developing necessary rules and regulations in order to implement the provisions of this section. These rules shall include a process for determining eligibility and the amount of the differential.

(e) To the extent that compensation for being called to active military duty is not already included in existing collective bargaining agreements, eligible employees of a state agency will qualify for the military pay differential, as defined above. When a collective bargaining agreement provides equal or greater benefits, the terms of the collective bargaining agreement shall control for as long as those benefits under the contract are applicable. Thereafter, those union employees shall be granted the difference in pay as described above.³

It is important to understand this statute in conjunction with your collective bargaining agreement, if you have one. One common union in Rhode Island for public employees is AFSCME, whose bargaining agreement can be found [here](#), with the relevant section on page 61.

Also relevant is Section 30-11-1, which provides for continuance on payroll of municipal employees in federal service:

Every city and town within this state is hereby authorized to continue on its payroll, either at full or partial pay, all or any of its regular officers and employees who are called into or enlist in the military or naval service of the United States, and to make such provisions as the city or town shall see fit to hold the positions thus vacated for these officers and employees at the expiration of their military or naval service, and to employ temporary assistants to perform the duties of these absent officers and employees.⁴

³ 30 R.I. GEN. LAWS § 30-6-5 (2022).

⁴ 30 R.I. GEN. LAWS § 30-11-1 (2022).

Private Employees⁵

Rhode Island also appears to provide reemployment rights to employees of private employers in section 30-11-7:

Any person who is a duly qualified member of any of the reserve forces of the United States who, in order to perform any military service he or she may be called upon to perform by proper authority, leaves a position, other than a temporary position, in the employ of an employer, who shall give evidence of the satisfactory completion of that training, and who is still qualified to perform the duties of that position, shall be entitled to be restored to his or her previous or a similar position in the same status, pay, and seniority, and this period of absence for military training shall be construed as an absence with leave and, within the discretion of the employer, the leave may be with or without pay.⁶

Access the Rhode Island General Laws 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 Rhode Island General Laws for yourself online, for free, at <http://webserver.rilin.state.ri.us/Statutes/>. To access the sections discussed in this article, follow the link and scroll down and select “30 Military Affairs and Defense” → To access Section 30-6-5, select “Chapter 30-6 Pay and Allowances” and select the appropriate section → To access section 30-11-1 and 30-11-7, select “Chapter 30-11 Employment Rights of Members of Armed Forces” and select the appropriate section.

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⁵ 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.

⁶ 30 R.I. GEN. LAWS § 30-11-7 (2022).

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.

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:

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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.