

Paid Military Leave in the U.S. Virgin Islands

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1.18: USERRA and Other Laws

2.0: Paid Leave

Title 23 Section 1524 of the U.S. Virgin Islands Code provides for 30 days of paid leave and differential pay for employees of the government of the Virgin Islands and its political subdivisions:

- (a) An officer or employee of the Government of the Virgin Islands, its agencies, authorities and public corporations, is entitled to leave without loss in pay, time or performance or efficiency rating for each day, not in excess of 30 days in a calendar year in which he is on federal active duty, or training duty as a Reserve of the Armed Forces, or a member of the National Guard.
- (b) An officer or employee of the Government of the Virgin Islands, its agencies, authorities and public corporations, is entitled to leave without loss in pay, time or performance or efficiency rating for each day in which he is on Territorial active military service.
- (c) An officer or employee of the Government of the Virgin Islands, its agencies, authorities and public corporations, who is on federal active duty, or training duty as a reserve of the Armed Forces, or a member of the National Guard, in excess of 30 days in a calendar year, is entitled to the difference in salary between the pay received from the military and his salary as an officer or employee of the Government of the Virgin Islands, if the military salary is not greater than the Government of the Virgin Islands salary.

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. 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.

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Such an officer or employee incurs no loss of time, performance or efficiency rating for each day of active duty or training duty.³

Meaning of “days”

While this section of the statute makes it clear that service members are to have 30 days of paid leave, the statute does leave some ambiguity in terms of 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 January 2023, the Virgin Islands has not addressed this, there have been no Virgin Islands court cases questioning it, and no Virgin Islands Attorney General Opinions providing clarification. 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 the Virgin Islands.

Private Employers

Section 1525 provides for protected leave for service members who are employed by private employers:

A person in the employ of a private employer shall, upon request, be granted a leave of absence by his employer for the period required to perform Territorial Active Military Service. Upon his release from that service, or upon his discharge from hospitalization incident to that service, such employee shall be permitted to return to his position with such seniority, status, pay grade and vacation as he would have had if he had not been absent for such purposes. He shall report for work at the beginning of his next regularly scheduled working period after the calendar day following his release, or within a reasonable time thereafter if delayed return is due to factors beyond the employee's control. Failure to report for work at such next regularly scheduled working period shall make the employee subject to the conduct rules of the employer pertaining to explanations and discipline with respect to absence from scheduled work. If the employee is not qualified to perform the duties of his position by reason of disability sustained during Territorial Active Military Service, but is qualified to perform the duties of any other position in the employ of the employer or his successor in interest, he shall be restored by that employer or successor to such other position as will provide him like seniority, status, and pay grade, or the nearest approximation thereof consistent with the circumstances in his case.⁴

Section 1525 must be read together with the federal law called the Uniformed Services Employment and Reemployment Rights Act (USERRA).⁵ USERRA applies to state and local governments (including the Virgin Islands), private employers, and the Federal Government. USERRA accords the right to unpaid but job-protected military leave to persons who have left

³ V.I. Code Ann. tit. 23 § 23-1524 (LexisNexis 2022).

⁴ V.I. Code Ann. tit. 23 § 23-1525 (LexisNexis 2022).

⁵ 38 U.S.C. 4301-35.

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.⁶ USERRA supersedes a state law that purports to limit USERRA rights or that imposes an additional prerequisite on the exercise of USERRA rights.

In order to benefit from the reemployment protections afforded by USERRA, an employee only must give the employer notice of their military leave – there is no requirement to request leave and be subsequently granted leave by the employer in order to have reemployment rights.

Additionally, USERRA provides specific allowances concerning when an employee is required to return to work after a period of service. Under Section 4312(e) of USERRA, a timely application for reemployment is based on how long the employee's period of uniformed service was:

- Less than 31 days → “not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service and the expiration of eight hours after a period allowing for the safe transportation of the person from the place of that service to the person’s residence”
- More than 30 days but less than 181 → “submitting an application for reemployment with the employer not later than 14 days after the completion of the period of service or if submitting such application within such period is impossible or unreasonable through no fault of the person, the next first full calendar day when submission of such application becomes possible”
- More than 180 days → “not later than 90 days after the completion of the period of service”
- If the service member is hospitalized or convalescing from an illness or injury incurred in or aggravated during the period of uniformed service → at the end of the period that is necessary for the person to recover from such illness or injury, report to the person’s employer or submit an application for reemployment with such employer. Such period of recovery may not exceed two years. Such two-year period shall be extended by the minimum time required to accommodate the circumstances beyond such person’s control which make reporting within the period specified in subparagraph (A) impossible or unreasonable.⁷

Access the U.S. Virgin Islands 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

⁶ 38 U.S.C. 4302(a).

⁷ 38 U.S.C. 4312(e).

discussed in this article. You can find a public version of the entirety of the U.S. Virgin Islands Code for yourself online, for free, at <https://www.vicourts.org/>. Once you are at that site, hover over “Reports and Resources” and select “Virgin Islands Code”. This will take you to a search menu on LexisNexis. Once there, type “VI – Virgin Islands Code Annotated”. From there, select Title 23 → Chapter 19 National Guard → Subchapter 1 General Provisions → Select the section you wish to read.

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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 eight⁸ 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
1 Constitution Ave. NE
Washington, DC 20002⁹

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

⁹ You can also contribute on-line at www.roa.org.