

Law Review¹ 25044

November 2025

The Government Shutdown Delayed your Release from Active Duty and Put you Over the Five-Year Limit, but you Still Have the Right to Reemployment under USERRA.

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

1.1.3.2—USERRA applies to regular military service.

1.3.1.2—Character and Duration of Service.

1.3.1.3—Timely application for reemployment.

Q: I am a Captain in the Army, and I have read with great interest several of your “Law Review” articles about the Uniformed Services

¹ I invite the reader’s attention to www.roa.org/lawcenter. You will find more than 2,200 “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouses’ Protection Act (USFSPA), the title 38 chapters that provide veterans’ benefits administered by the Department of Veterans Affairs, and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. I am the author of more than 90% of the articles, but we are always looking for “other than Sam” articles by other lawyers.

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. For 45 years, I have collaborated with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also 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 38 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 <mailto:swright@roa.org>.

Employment and Reemployment Rights Act (USERRA). In 2020, when I was considering enlisting, I found your Law Review 18103 (October 2018), and I thereby learned that USERRA applies to service in the Active Component as well as the Reserve Component of the armed forces. I never intended to make the Army my career, but I considered it my duty to serve one honorable tour of active duty, of four or five years, because my father, my grandfather, and my great-grandfather all served in the Army.

I entered active duty by reporting to Officer Candidate School (OCS) on 10/15/2020. I fully expected to leave active duty by 10/14/2025, the fifth anniversary of my entry on active duty. After reading your Law Review 18103 and other articles, I was aware of USERRA's five-year limit, and I want to return to the good civilian job that I left in 2020 to serve in the Army.

Because of the “lapse in appropriations” and the Government shutdown that began on 10/1/2025, my departure from active duty was delayed until 11/22/2025. Does the delay in my release from active duty mean that I have lost the right to reemployment in my pre-service civilian job?

Answer, bottom line up front!

No, it does not mean that. You were unable to obtain your release from active duty before the expiration of your five-year limit through no fault of yours, and therefore the 39-day delay in your release from active duty does not defeat your right to reemployment. If you meet the other four USERRA criteria, you have the right to reemployment in your civilian job even if that means that another employee must be displaced to make room for you. You are also entitled to be treated **as if you had remained continuously employed by the pre-service employer during the entire 2020-25 period when you were away from work for Army service.**

Explanation

Section 4312(c) of USERRA sets forth the five-year limit and the exemptions from the limit as follows:

(c) Subsection (a) [the right to reemployment] shall apply to a person who is absent from a position of employment by reason of service in the uniformed services if such person's cumulative period of service in the uniformed services, with respect to the employer relationship for which a person seeks reemployment, does not exceed five years, **except that any such period of service shall not include any service—**

(1)

that is required, beyond five years, to complete an initial period of obligated service;

(2)

during which such person was unable to obtain orders releasing such person from a period of service in the uniformed services before the expiration of such five-year period and such inability was through no fault of such person;

(3)

performed as required pursuant to section 10147 of title 10, under section 502(a) or 503 of title 32, or to fulfill additional training requirements determined and certified in writing by the Secretary concerned, to be necessary for professional development, or for completion of skill training or retraining; or

(4) performed by a member of a uniformed service who is—

(A)

ordered to or retained on active duty under section 688, 12301(a), 12301(g), 12302, 12304, 12304a, 12304b, or 12305 of title 10 or under section 331, 332, 359, 360, 367, or 712 of title 14;

(B)

ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(C)

ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10;

(D)

ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services;

(E)

called into Federal service as a member of the National Guard under chapter 15 of title 10 or under section 12406 of title 10; or

(F)

ordered to full-time National Guard duty (other than for training) under section 501(f)(2)(A) of title 32 when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President

and supported by Federal funds, as determined by the Secretary concerned.³

Under section 4312(c), there are nine exemptions from the five-year limit. That is, there are nine kinds of service that do not count toward exhausting your five-year limit. One of the exemptions is for a period of service “**during which such person was unable to obtain orders releasing such person from a period of service in the uniformed services before the expiration of such five-year period and such inability was through no fault of such person.**”⁴ Your situation clearly falls within the four corners of this exemption. The delay in your release from active duty, because of the Government Shutdown, does not put you over the five-year limit and cause you to lose your right to reemployment.

USERRA’s legislative history contains the following instructive sentence: “Section 4312(c)(2) would provide that the cumulative period of service may exceed five years if the person was unable to obtain orders releasing him or her from active service through no fault of such person.”⁵

Q: You wrote that I would have the right to reemployment if I met the other four USERRA conditions. What are the other four conditions?

A: As I have explained in Law Review 24047 (October 2024) and many other articles, you (or any returning service member or veteran) must meet five conditions to have the right to reemployment under USERRA:

³ 38 U.S.C. § 4312(c). See generally Law Review 16043 (May 2016) for a detailed discussion of what counts and what does not count in exhausting an individual’s five-year limit with respect to an employer relationship.

⁴ 38 U.S.C. § 4312(c)(2) (emphasis supplied).

⁵ House Committee Report, April 28, 1993, H.R. Rep. 103-65 (Part 1). This is a comprehensive report by the House Committee on Veterans Affairs. The complete text of the report can be found in /Appendix D-1 of *The USERRA Manual*, by Kathryn Piscitelli and Edward Still. The quoted sentence can be found on page 722 of the 2025 edition of the *Manual*.

- a. You must have left a civilian job (federal, state, local, or private sector) to perform “service in the uniformed services” as defined by USERRA.⁶
- b. You must have given the employer prior oral or written notice.⁷
- c. Your cumulative period or periods of uniformed service, related to the employer relationship for which you seek reemployment, must not have exceeded five years.⁸
- d. You must have been released from the period of service without having received a disqualifying bad discharge from the military.⁹
- e. After release from the period of service, you must have made a timely application for reemployment with the pre-service employer.¹⁰

It seems clear that you now meet four of the five conditions for reemployment. In 2020, you left your civilian job to enlist in the Army, and you gave the employer prior oral or written notice. You have not exceeded the five-limit, and you were released from active duty without having received a disqualifying bad discharge from the Army.

The final condition that you must meet is to make a timely application for reemployment. After a period of service of 181 days or more, you have 90 days to apply for reemployment.¹¹ Because you were released from active duty on 11/22/2025, you must apply for reemployment by

⁶ 38 U.S.C. § 4312(a).

⁷ 38 U.S.C. § 4312(a)(1).

⁸ 38 U.S.C. § 4312(c). *See generally* Law Review 16043 (May 2016) for a detailed discussion of what counts and what does not count in exhausting the five-year limit.

⁹ 38 U.S.C. § 4304. Disqualifying bad discharges include punitive discharges (awarded by court martial for serious offences) and OTH (“other than honorable”) administrative discharges.

¹⁰ After a period of service that lasted more than 180 days, the returning service member or veteran has 90 days to apply for reemployment. 38 U.S.C. § 4312(e)(1)(D). Shorter deadlines apply after shorter periods of service.

¹¹ 38 U.S.C. § 4312(e)(1)(D).

2/20/2026.¹² Please see Law Review 77 (June 2003) for a sample application for reemployment letter.

Please join or support ROA.

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. We add new articles each month.

ROA is the nation’s only national military organization that exclusively and solely supports the nation’s reserve components, including the Coast Guard Reserve (6,179 members), the Marine Corps Reserve 32,599 members), the Navy Reserve (55,224 members), the Air Force Reserve (68,048 members), the Air National Guard (104,984 members), the Army Reserve (176,171 members), and the Army National Guard (329,705 members).¹³

ROA is more than a century old. On 10/2/1922 a group of veterans of “The Great War,” as World War I was then known, founded our organization at a meeting in Washington’s historic Willard Hotel. The meeting was called by General of the Armies John J. Pershing, who had commanded American troops in the recently concluded “Great War.” 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 adequate national security. For more than a century, we have argued

¹² I have computed 90 days as follows: 8 days in November, 31 days in December, 31 days in January, plus 20 days in February equals 90 days.

¹³ See <https://crsreports.congress.gov/product/pdf/IF/IF10540/>. These are the authorized figures as of 9/30/2022.

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 advocate for the rights and interests of service members and educate service members, military spouses, attorneys, judges, employers, Department of Labor (DOL) investigators, Employer Support of the Guard and Reserve (ESGR) volunteers, federal and state legislators and 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 eight¹⁴ uniformed services, you are eligible for membership in ROA,¹⁵ 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 <https://www.roa.org/page/memberoptions> or call ROA at 800-809-9448.

¹⁴ Congress recently established the United States Space Force as the eighth uniformed service.

¹⁵ Spouses, widows, and widowers of past or present members of the uniformed services are also eligible to join.

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 20002¹⁶

¹⁶ You can also contribute on-line at www.roa.org.