

## **USERRA Applies to Service in the Active Component of the Armed Forces, as well as National Guard and Reserve Service.**

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- 1.1.3.1—USERRA applies to voluntary service
- 1.1.3.2—USERRA applies to regular military service
- 1.2—USERRA forbids discrimination
  - 1.3.1.1—Left job for service and gave prior notice
  - 1.3.2.1—Prompt reinstatement after returning from service
  - 1.3.2.2—Continuous accumulation of seniority—escalator principle
  - 1.3.2.3—Pension credit for service time
  - 1.3.2.5—Rate of pay upon reinstatement
- 1.8—Relationship between USERRA and other laws/policies
- 4.2—SCRA right to terminate a lease or contract upon mobilization

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<sup>1</sup> I invite the reader's attention to [www.roa.org/lawcenter](http://www.roa.org/lawcenter). You will find more than 2,000 "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), 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.

<sup>2</sup> 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 (VRRRA—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 VRRRA 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 VRRRA 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>.

**Section 4303(13) of the Uniformed Services Employment and Reemployment Rights Act (USERRA) defines the term “service in the uniformed services” as follows:**

The term “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 training, full-time National Guard duty, State active duty for a period of 14 days or more, State active duty in response to a national emergency declared by the President under the National Emergencies Act, State active duty in response to a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, *a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty*, a period for which a System member of the National Urban Search and Rescue Response System is absent from a position of employment due to an appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by the section 12503 of title 10 or section 115 of title 32.<sup>3</sup>

**Q: I am a recent college graduate and a junior executive at a major multinational corporation—let us call it Daddy Warbucks International or DWI. My grandfather served in the Army during the Vietnam War and my late great-grandfather was a decorated Army veteran of World War II. I remember hearing their “war stories” during family gatherings, and I have always thought about the possibility of joining the Army myself.**

**This year, I have read that all the services, but especially the Army, have had great difficulty meeting their recruiting quotas for Fiscal Year (FY) 2022, which ended 9/30/2022. I decided that now is the time for me to serve, and I visited an Army recruiter and signed up. I have orders to report for Officer Candidate School (OCS) on 12/1/2022. Under the contract that I signed, I must remain on active duty for four years, until 11/30/2026.**

**I said nothing to my DWI supervisor or any of my DWI colleagues about my decision to join the Army until very recently, when I was within 60 days of my active-duty report date. The recruiter helped me schedule my examination at the Military Examination and Processing Station (MEPS) for three days when I was able to take leave from my DWI job, without telling anyone but the recruiter the purpose of the leave. I kept my military plans secret until recently because I feared that DWI might fire me if they learned about those plans, and losing my job four months before my OCS report date would put me in a world of hurt financially.**

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<sup>3</sup> 38 U.S.C. § 4303(13) (emphasis supplied).

**While doing an Internet search, I found some of your “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA). It seems that most of the new reemployment rights cases deal with persons serving in the National Guard and Reserve, and most of the old cases deal with persons who were drafted.<sup>4</sup> Does USERRA also apply to individuals (like me) who voluntarily enlist in the Active Component of the armed forces?**

**Answer, bottom line up front:**

**Yes.** USERRA applies to voluntary as well as involuntary service in the Active Component as well as the Reserve Component of the armed forces. If you meet the five USERRA conditions (discussed below), you will have the right to reemployment as a matter of federal law.

### **Explanation**

As I have explained in detail in Law Review 15116 (December 2015) and many other articles, you (or any service member or veteran) will have the right to reemployment if you meet the five USERRA conditions for reemployment:

- a. You must have left a civilian job (federal, state, local, or private sector) to perform “service in the uniformed service” as defined by USERRA.<sup>5</sup>
- b. You must have given the civilian employer prior oral or written notice, or an “appropriate officer” of the uniformed service in which you serve must have given the employer notice on your behalf.<sup>6</sup>
- c. You must not have exceeded the five-year limit on the duration of the period or periods of uniformed service that you have performed with respect to the employer relationship for which you seek reemployment.<sup>7</sup>
- d. You must not have received a disqualifying bad discharge from the military.<sup>8</sup>

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<sup>4</sup> Almost 50 years ago, in January 1973, Congress abolished the draft and established the All-Volunteer Military. For two generations, all military service in our country has been voluntary.

<sup>5</sup> 38 U.S.C. § 4312(a). The term “service in the uniformed services” is defined in section 4303(13) of USERRA, 38 U.S.C. § 4303(13). I have quoted that subsection, in its entirety, at the top of this article. The definition, by its terms, explicitly includes service in the Active Component of the armed forces, as well as the National Guard and Reserve.

<sup>6</sup> 38 U.S.C. § 4312(a)(1).

<sup>7</sup> 38 U.S.C. § 4312(c).

<sup>8</sup> 38 U.S.C. § 4304. Disqualifying bad discharges include punitive discharges, awarded by court martial for serious offenses, and OTH (other-than-honorable) administrative discharges.

- e. After release from the period of service, you must have made a timely application for reemployment.<sup>9</sup>

If you meet all five of these conditions, after you have left active duty, you will have the right to reemployment. If you fail to meet one or more of these conditions, you will not have the right to reemployment.

**Q: When I gave oral notice to the DWI personnel office director at the DWI facility where I work, she said that it is company policy to reemploy rank-and-file employees who are drafted or who are involuntarily called to service in the National Guard or Reserve, but not executive and professional employees like me. What do you think about that?**

**A:** Section 4331(a) of USERRA<sup>10</sup> gives the Department of Labor the authority to promulgate regulations about the application of USERRA to state and local governments and private employers, and DOL promulgated such regulations in 2005. The regulations are codified in Title 20 of the Code of Federal Regulations (C.F.R.), Part 1002. The pertinent section is as follows: **“Does an individual have rights under USERRA even if he or she is an executive, managerial, or professional employee?** Yes. USERRA applies to all employees. There is no exclusion for executive, managerial, or professional employees.”<sup>11</sup>

Your rights are under the federal statute, USERRA, not the DWI company policy. USERRA is a floor and not a ceiling on your rights as a service member or veteran. The company policy can give you greater or additional rights, over and above USERRA, but company policy cannot deprive you of your federal statutory rights. Section 4302 of USERRA provides:

**(a)** Nothing in this chapter shall supersede, nullify or diminish any Federal or State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that establishes a right or benefit that is more beneficial to, or is in addition to, a right or benefit provided for such person in this chapter.

**(b)** This chapter supersedes any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.<sup>12</sup>

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<sup>9</sup> After a period of service of 181 days or more, you have 90 days to apply for reemployment. 38 U.S.C. § 4312(c). Shorter deadlines apply after shorter periods of service.

<sup>10</sup> 38 U.S.C. § 4331(a).

<sup>11</sup> 20 C.F.R. § 1002.42 (bold question in original).

<sup>12</sup> 38 U.S.C. § 4302.

**Q: The personnel office director demanded to know: “When can we expect you to return?” I told her that my active duty commitment is for four years, until November 2026, but that it is possible that I will decide to remain on active duty for a full career of 20 years or more. She said: “That is unacceptable. We cannot give you a military leave of absence if you will not promise us a specific return date.” Am I required to promise to return to DWI as a condition of the right to reemployment?**

**A: No.** The pertinent section of the DOL USERRA Regulation is as follows:

**Is the employee required to tell his or her civilian employer that he or she intends to seek reemployment after completing uniformed service before the employee leaves to perform service in the uniformed services?**

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No. When the employee leaves the employment position to begin a period of service, he or she is not required to tell the civilian employer that he or she intends to seek reemployment after completing uniformed service. Even if the employee tells the employer before entering or completing uniformed service that he or she does not intend to seek reemployment after completing the uniformed service, the employee does not forfeit the right to reemployment after completing service. The employee is not required to decide in advance of leaving the civilian employment position whether he or she will seek reemployment after completing uniformed service.<sup>13</sup>

USERRA’s legislative history makes clear the congressional intent to preserve the service member’s right to maintain the right to return to the pre-service employer, after release from service, as an unburned bridge. The report of the Senate Committee on Veterans’ Affairs includes the following:

In keeping with current law, the Committee does not intend that the notice requirement [the requirement to notify the employer that the departure from the civilian job is for uniformed service] be construed to require that the employee decide, at the time the person leaves the job, whether he or she will seek reemployment upon release from active service. That decision does not have to be made until after the individual’s discharge or release and transportation time back home.<sup>14</sup>

The report of the House Committee on Veterans’ Affairs is similar:

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<sup>13</sup> 20 C.F.R. § 1002.88 (bold question in original).

<sup>14</sup> S. Rep. No. 103-358, 1993 WL 433576 (LEG. HISTORY), October 18, 1993. This committee report is reprinted, in its entirety, in Appendix D-2 of *The USERRA Manual*, by Kathryn Piscitelli and Edward Still. The quoted language can be found on page 890 of the 2021 edition of the *Manual*.

The Committee does not intend that the requirement to give notice to one's employer in advance of service in the uniformed services be construed to require the employee to decide, at the time the person leaves the job, whether he or she will seek reemployment upon release from active service. One of the basic purposes of the reemployment statute is to maintain the service member's civilian job as an "unburned bridge." Not until the individual's discharge or release from service and/or transportation back home, which triggers the application time, does the service member have to decide whether to recross that bridge. See *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 284: "He is not pressed for a decision immediately on his discharge, but has the opportunity to make plans for the future and readjust himself to civilian life."<sup>15</sup>

**Q: At the end of a most unpleasant conversation, the personnel director said: "Because you are an executive employee, and because you refuse to give us a date by which you will return to work, we do not give you permission to take military leave. If you at some point apply for reemployment, we will deny your application." What do you say about that?**

**A:** You do not need the employer's permission to leave your job for uniformed service, and the employer does not get a veto. The pertinent section of the DOL USERRA Regulation is as follows:

**Is the employee required to get permission from his or her employer before leaving to perform service in the uniformed services?**

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No. The employee is not required to ask for or get his or her employer's permission to leave to perform service in the uniformed services. The employee is only required to give the employer notice of pending service.<sup>16</sup>

**Q: What do I do now? I will be leaving my job soon, to report to basic training, and I want reassurance that my DWI job is behind me as an unburned bridge.**

**A:** I suggest that you send the personnel director a certified letter, saying that you are leaving your DWI job to report to active duty and that it is possible that you will seek reemployment at some point in the future. You might also enclose a copy of this article.

There is no point in your getting into an extended argument with DWI and its personnel director about what your rights may be four years from now. You cannot get a court order commanding the personnel director to acknowledge that you will have the right to

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<sup>15</sup> H.R. Rep. No. 103-65 (Part 1), 1993 WL 235763 (LEG. HISTORY), April 28, 1993. The committee report is reprinted, in its entirety, in Appendix D-1 of *The USERRA Manual*, by Kathryn Piscitelli and Edward Still. The quoted language can be found on page 809 of the 2021 edition of the *Manual*.

<sup>16</sup> 20 C.F.R. § 1002.87 (bold question in original).

reemployment if you meet the five USERRA conditions. Your reassurance about the DWI job as an unburned bridge will need to come from the statute, USERRA, and from my explanation of the statute.

**Q: If I meet the five USERRA conditions in late 2026, including release from active duty and timely application for reemployment, what am I entitled to under USERRA?**

**A:** Here are your entitlements upon reemployment:

### **Prompt reinstatement**

Here are the two pertinent sections of the DOL USERRA Regulation:

#### **When is an employee entitled to be reemployed by his or her civilian employer?**

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The employer must promptly reemploy the employee when he or she returns from a period of service if the employee meets the Act's eligibility criteria as described in Subpart C of these regulations.<sup>17</sup>

#### **How is "prompt reemployment" defined?**

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"Prompt reemployment" means as soon as practicable under the circumstances of each case. Absent unusual circumstances, reemployment must occur within two weeks of the employee's application for reemployment. For example, prompt reinstatement after a weekend National Guard duty generally means the next regularly scheduled working day. On the other hand, prompt reinstatement following several years of active duty may require more time, because the employer may have to reassign or give notice to another employee who occupied the returning employee's position.<sup>18</sup>

### **Escalator principle**

As I have explained in footnote 2 and in Law Review 15067 (August 2015), Congress enacted USERRA in 1994 as a long-overdue update and rewrite of the Veterans' Reemployment Rights Act (VRRRA), which was originally enacted in 1940. In its first case applying the 1940 reemployment statute, the Supreme Court enunciated the "escalator principle" when it held: "[The returning veteran] does not step back on the seniority escalator at the point he stepped

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<sup>17</sup> 20 C.F.R. § 1002.180 (bold question in original).

<sup>18</sup> 20 C.F.R. § 1002.181 (bold question in original).

off. He steps back on at the precise point he would have occupied had he kept his position continuously during the war.”<sup>19</sup>

Two sections of USERRA codify the escalator principle in the current version of the reemployment law. Under section 4313(a)(2)(A), a returning service member or veteran who has served a period of uniformed service of 91 days or more and who meets the five USERRA conditions is entitled to be reemployed “in the position of employment in which the person *would have been employed* if the continuous employment of such person with the employer had not been interrupted by such service, or a position of like, seniority, status and pay, the duties of which the person is qualified to perform.”<sup>20</sup>

Section 4316(a) of USERRA provides:

A person who is reemployed under this chapter is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of service in the uniformed *services plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed.*<sup>21</sup>

### **Pension credit for military service time**

Under section 4318 of USERRA, the returning service member or veteran who meets the USERRA conditions is entitled to civilian pension credit for the entire time that he or she was away from work for service in the uniformed services. Section 4318 reads as follows:

**(a)**

**(1)**

**(A)** Except as provided in subparagraph (B), in the case of a right provided pursuant to an employee pension benefit plan (including those described in sections 3(2) and 3(33) of the Employee Retirement Income Security Act of 1974 or a right provided under any Federal or State law governing pension benefits for governmental employees, the right to pension benefits of a person reemployed under this chapter shall be determined under this section.

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<sup>19</sup> *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 284-85 (1946).

<sup>20</sup> 38 U.S.C. § 4313(a)(2)(A) (emphasis supplied).

<sup>21</sup> 38 U.S.C. § 4316(a) (emphasis supplied). See *generally* Law Reviews 16022 (April 2016), 19011 (January 2019), 20043 (April 2020), 20047 (May 2020), and 22014 (February 2022) for a detailed discussion of USERRA’s escalator principle.



**(B)** In the case of benefits under the Thrift Savings Plan, the rights of a person reemployed under this chapter shall be those rights provided in section 8432b of title 5. The first sentence of this subparagraph shall not be construed to affect any other right or benefit under this chapter.

**(2)**

**(A)** A person reemployed under this chapter shall be treated as not having incurred a break in service with the employer or employers maintaining the plan by reason of such person's period or periods of service in the uniformed services.

**(B)** Each period served by a person in the uniformed services shall, upon reemployment under this chapter, be deemed to constitute service with the employer or employers maintaining the plan for the purpose of determining the nonforfeitability of the person's accrued benefits and for the purpose of determining the accrual of benefits under the plan.

**(b)**

**(1)** An employer reemploying a person under this chapter shall, with respect to a period of service described in subsection (a)(2)(B), be liable to an employee pension benefit plan for funding any obligation of the plan to provide the benefits described in subsection (a)(2) and shall allocate the amount of any employer contribution for the person in the same manner and to the same extent the allocation occurs for other employees during the period of service. For purposes of determining the amount of such liability and any obligation of the plan, earnings and forfeitures shall not be included. For purposes of determining the amount of such liability and for purposes of section 515 of the Employee Retirement Income Security Act of 1974 or any similar Federal or State law governing pension benefits for governmental employees, service in the uniformed services that is deemed under subsection (a) to be service with the employer shall be deemed to be service with the employer under the terms of the plan or any applicable collective bargaining agreement. In the case of a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974, any liability of the plan described in this paragraph shall be allocated—

**(A)** by the plan in such manner as the sponsor maintaining the plan shall provide; or

**(B)** if the sponsor does not provide—

**(i)** to the last employer employing the person before the period served by the person in the uniformed services, or

**(ii)** if such last employer is no longer functional, to the plan.

**(2)** A person reemployed under this chapter shall be entitled to accrued benefits pursuant to subsection (a) that are contingent on the making of, or derived from,

employee contributions or elective deferrals (as defined in section 402(g)(3) of the Internal Revenue Code of 1986 only to the extent the person makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the person would have been permitted or required to contribute had the person remained continuously employed by the employer throughout the period of service described in subsection (a)(2)(B). Any payment to the plan described in this paragraph shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the person's service in the uniformed services, such payment period not to exceed five years.

**(3)** For purposes of computing an employer's liability under paragraph (1) or the employee's contributions under paragraph (2), the employee's compensation during the period of service described in subsection (a)(2)(B) shall be computed—

**(A)** at the rate the employee would have received but for the period of service described in subsection (a)(2)(B), or

**(B)** in the case that the determination of such rate is not reasonably certain, on the basis of the employee's average rate of compensation during the 12-month period immediately preceding such period (or, if shorter, the period of employment immediately preceding such period).

**(c)** Any employer who reemploys a person under this chapter and who is an employer contributing to a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974, under which benefits are or may be payable to such person by reason of the obligations set forth in this chapter, shall, within 30 days after the date of such reemployment, provide information, in writing, of such reemployment to the administrator of such plan.<sup>22</sup>

**Q: What is the rate of pay to which I am entitled under USERRA, upon returning to work?**

**A:** If you meet the five USERRA conditions, you are entitled to be paid at the rate of the “escalated reinstatement position”—the position that you would have attained if you had been continuously employed. You are entitled to cost-of-living increases that other employees received while you were away from work for service, and you are entitled to annual pay increases based on an additional year of company service.<sup>23</sup>

**Q: I live in a nice apartment, for which I pay \$1,500 per month. The lease does not expire until 7/1/2023. I also lease a luxury automobile, for which I pay \$500 per month. The automobile**

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<sup>22</sup> 38 U.S.C. § 4318. See generally Law Reviews 21059 (September 2021) and 22036 (June 2022) for a detailed discussion of the rights of the returning service member or veteran under section 4318 of USERRA.

<sup>23</sup> See generally Law Review 18081 (September 2018).

lease does not expire until 12/31/2024. Now that I am going on active duty, I do not need the apartment or the automobile. The Army recruiter told me that USERRA gives me the right to terminate the apartment lease and the automobile lease early--when I report to active duty. Is that correct?

A: It is true that federal law gives you the right to terminate these leases under your circumstances, but the pertinent federal law is the Servicemembers Civil Relief Act (SCRA), not USERRA. Here is the pertinent SCRA section:

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**§ 3955. Termination of residential or motor vehicle leases**

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- **(a)** Termination by lessee.
  - **(1)** In general. The lessee on a lease described in subsection (b) may, at the lessee's option, terminate the lease at any time after--
    - **(A)** *the lessee's entry into military service; or*
    - **(B)** the date of the lessee's military orders described in paragraph (1)(B) or (2)(B) of subsection (b), as the case may be.
  - **(2)** Joint leases. A lessee's termination of a lease pursuant to this subsection shall terminate any obligation a dependent of the lessee may have under the lease.
- **(b)** Covered leases. This section applies to the following leases:
  - **(1)** Leases of premises. A lease of premises occupied, or intended to be occupied, by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose if--
    - **(A)** the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service; or
    - **(B)** the servicemember, while in military service, executes the lease and thereafter receives military orders for a change of permanent station or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days.
  - **(2)** Leases of motor vehicles. A lease of a motor vehicle used, or intended to be used, by a servicemember or a servicemember's dependents for personal or business transportation if--
    - **(A)** the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service under a call or order specifying a period of not less than 180 days (or who enters military service under a call or order specifying a period of 180 days or less and who, without a break in service, receives orders extending the period of military service to a period of not less than 180 days); or
    - **(B)** the servicemember, while in military service, executes the lease and thereafter receives military orders--

- (i) for a change of permanent station--
    - (I) from a location in the continental United States to a location outside the continental United States; or
    - (II) from a location in a State outside the continental United States to any location outside that State; or
  - (ii) to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 180 days.
- (c) Manner of termination.
  - (1) In general. Termination of a lease under subsection (a) is made--
    - (A) by delivery by the lessee of written notice of such termination, and a copy of the servicemember's military orders, to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee); and
    - (B) in the case of a lease of a motor vehicle, by return of the motor vehicle by the lessee to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee), not later than 15 days after the date of the delivery of written notice under subparagraph (A).
  - (2) Delivery of notice. Delivery of notice under paragraph (1)(A) may be accomplished--
    - (A) by hand delivery;
    - (B) by private business carrier; or
    - (C) by placing the written notice in an envelope with sufficient postage and with return receipt requested, and addressed as designated by the lessor (or the lessor's grantee) or to the lessor's agent (or the agent's grantee), and depositing the written notice in the United States mails.
- (d) Effective date of lease termination.
  - (1) Lease of premises. *In the case of a lease described in subsection (b)(1) that provides for monthly payment of rent, termination of the lease under subsection (a) is effective 30 days after the first date on which the next rental payment is due and payable after the date on which the notice under subsection (c) is delivered.* In the case of any other lease described in subsection (b)(1), termination of the lease under subsection (a) is effective on the last day of the month following the month in which the notice is delivered.
  - (2) Lease of motor vehicles. In the case of a lease described in subsection (b)(2), termination of the lease under subsection (a) is effective on the day on which the requirements of subsection (c) are met for such termination.
- (e) Arrearages and other obligations and liabilities.
  - (1) Leases of premises. Rent amounts for a lease described in subsection (b)(1) that are unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. The lessor may not impose an early termination charge, but any taxes, summonses, or other obligations and liabilities of the lessee in accordance with the terms of the lease, including

reasonable charges to the lessee for excess wear, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

- **(2)** Leases of motor vehicles. Lease amounts for a lease described in subsection (b)(2) that are unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. The lessor may not impose an early termination charge, but any taxes, summonses, title and registration fees, or other obligations and liabilities of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear or use and mileage, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.
- **(f)** Rent paid in advance. Rents or lease amounts paid in advance for a period after the effective date of the termination of the lease shall be refunded to the lessee by the lessor (or the lessor's assignee or the assignee's agent) within 30 days of the effective date of the termination of the lease.
- **(g)** Relief to lessor. Upon application by the lessor to a court before the termination date provided in the written notice, relief granted by this section to a servicemember may be modified as justice and equity require.
- **(h)** Misdemeanor. *Any person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a servicemember or a servicemember's dependent who lawfully terminates a lease covered by this section, or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.*
- **(i)** Definitions.
  - **(1)** Military orders. The term "military orders", with respect to a servicemember, means official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status.
  - **(2) CONUS.** The term "continental United States" means the 48 contiguous States and the District of Columbia.<sup>24</sup>

**Please join or support ROA**

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<sup>24</sup> 50 U.S.C. § 3955 (emphasis supplied). See generally Law Review 19100 (November 2019) for a detailed discussion about the SCRA right to terminate a residential or motor vehicle lease upon entering active duty voluntarily or involuntarily.

This article is one of 2,000-plus “Law Review” articles available at [www.roa.org/lawcenter](http://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 eight<sup>25</sup> 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](http://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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1 Constitution Ave. NE  
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<sup>25</sup> Congress recently established the United States Space Force as the 8<sup>th</sup> uniformed service.

<sup>26</sup> You can also contribute on-line at [www.roa.org](http://www.roa.org).