

LAW REVIEW¹ 24056

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The Deadline for Reporting Back to Work after a Drill Weekend or Other Short Period of Uniformed Service.

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1.3.1.3—Timely application for reemployment.

1.3.2.7—Adequate rest before and after a period of service.

Q: I am a Lieutenant Colonel in the Air Force Reserve (USAFR) and a life member of the Reserve Organization of America (ROA).³ I have read with great interest many of your “Law Review” articles about the

¹ I invite the reader’s attention to 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.

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>.

³ The Reserve Officers Association was founded in 1922 and congressionally chartered in 1950. In 2018, ROA members amended the ROA Constitution and expanded membership eligibility to include enlisted personnel as well as officers. The organization adopted the “doing business as” name of “Reserve Organization of America” to emphasize that the organization represents and seeks to recruit as members service members of all ranks, from E-1 to O-10.

Uniformed Services Employment and Reemployment Rights Act (USERRA).

I drill in a reserve unit that trains at an Air Force base that is hundreds of miles away from my home and civilian job. My drill weekend starts early Saturday morning and ends late Sunday afternoon. My return trip gets me home very late Sunday night or early Monday morning, even if there are no travel delays.

After a recent drill weekend, I arrived at my home at 11:30 pm Sunday night. Normally, I am expected to be at work at my civilian job at 8 am on weekdays. On that particular Monday morning, I arrived at 10 am, and my supervisor reprimanded me for being two hours late and threatened me with discipline, maybe firing, if I were late again.

I explained to my supervisor that the Air Force requires me to train one weekend per month at a base that is hundreds of miles away and that the long trip home precludes me from reporting back to work at 8 am after a drill weekend and that I will likely be late on every Monday that follows a drill weekend. My supervisor responded: “That is your problem. Do you want to work for this company, or do you want to play soldier? You cannot do both. If you are late for work on Monday mornings after your Air Force weekends, I will write you up on charges and get you fired.”

What is the deadline for me to report back to work after a drill weekend or other short period of military training or service?

A: Under section 4312(e) of USERRA, the deadline for you to report back to work or apply for reemployment depends upon the duration of your period of uniformed service. That section provides:

(1) Subject to paragraph (2), a person referred to in subsection (a) shall, upon the completion of a period of service in the uniformed services, notify the employer referred to in such subsection of the person's intent to return to a position of employment with such employer as follows:

(A) *In the case of a person whose period of service in the uniformed services was less than 31 days, by reporting to the employer—*

(i) 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; or

(ii) as soon as possible after the expiration of the eight-hour period referred to in clause (i), if reporting within the period referred to in such clause is impossible or unreasonable through no fault of the person.

(B) In the case of a person who is absent from a position of employment for a period of any length for the purposes of an examination to determine the person's fitness to perform service in the uniformed services, by reporting in the manner and time referred to in subparagraph (A).

(C) In the case of a person whose period of service in the uniformed services was for more than 30 days but less than 181 days, by 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.

(D) In the case of a person whose period of service in the uniformed services was for more than 180 days, by submitting an application for reemployment with the employer not later than 90 days after the completion of the period of service.⁴

Even if you arrive home before midnight Sunday evening, the eight-hour period mentioned in this section puts you into Monday, and the “first full calendar day” thereafter is Tuesday. In your situation as you describe it, the deadline for you to report back to work would be 8 am on Tuesday. You were not two hours late reporting back to work. You were 22 hours early.

Q: There will probably be instances where canceled flights or other travel problems will delay my return until Wednesday or even Thursday. How does USERRA apply in this circumstance?

A: If, through no fault of yours, it is “impossible or unreasonable” for you to report back to work by 8 am Tuesday, you must report back to work as soon as possible.⁵

Please join or support ROA.

This article is one of 2,200-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.

⁴ 38 U.S.C. § 4312(e)(1) (emphasis supplied).

⁵ 38 U.S.C. § 4312(e)(1)(A)(ii).

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).⁶

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 for adequate national security. For more than 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 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

⁶ See <https://crsreports.congress.gov/product/pdf/IF/IF10540/>. These are the authorized figures as of 9/30/2022.

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 <https://www.roa.org/page/memberoptions>.

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

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

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