



RESERVE AFFAIRS

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
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MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY FOR MANPOWER
AND RESERVE AFFAIRS
ASSISTANT SECRETARY OF THE NAVY FOR MANPOWER
AND RESERVE AFFAIRS
ASSISTANT SECRETARY OF THE AIR FORCE FOR
MANPOWER AND RESERVE AFFAIRS
DIRECTOR OF RESERVE AND TRAINING, USCG

SUBJECT: Reemployment Protections for Activated Reserve Component Members

Following the terrorist attacks on the World Trade Center in New York and the Pentagon on September 11, 2001, the President declared a national emergency and ordered a partial mobilization of the Reserve force. Reserve component members are already leaving their civilian jobs to be mobilized for the national emergency.

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as codified in chapter 43 of title 38, United States Code (U.S.C.), provides broad reemployment protections for members of the uniformed services following periods of military service. However, there is a limit as to how long an employee can be absent from his or her civilian job to perform military duty and retain his or her reemployment rights.

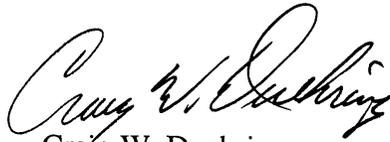
Section 4312(c) of title 38, U.S.C., sets a five-year limit for retaining reemployment rights. However, certain duty is exempt from the five-year limit. Section 4312(c)(4)(A) exempts service when involuntarily ordered to active duty under section 12302 of title 10, U.S.C., (partial mobilization). Further, section 4312(c)(4)(B) exempts service for those members "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."

The DoD Instruction 1205.12, "Civilian Employment and Reemployment Rights of Applicants for, and Service Members and Former Service Members of the Uniformed Services" implements USERRA. Paragraph 6.6. of this Instruction requires the Secretaries of the Military Departments and the Commandant of the Coast Guard to make an exemption determination for those periods of active duty when a Service member is 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 Congress. The Instruction further states that if the Secretary determines that the purpose of the order to, or retention on, active duty is for the direct or indirect support of the war or national emergency, then the orders of the Service member should be so annotated, since that period of service is then exempt from the 5-year cumulative service limit.



With Presidential Proclamation 7463 dated September 14, 2001, that declared a "National Emergency by Reason of Certain Terrorist Attacks," it would be appropriate to make a determination that the period of service performed by members who volunteer for active duty under section 12301(d) of title 10, U.S.C., to support missions and operations associated with the national emergency is exempt from the USERRA five-year limit. If you make such a determination, it would be helpful for the affected service members to have a statement included in their orders that "The period of service under these orders is exempt from the five-year limit as provided in 38 U.S.C. 4312(c)(4)(B)."

If you have any questions, please contact Mr. Tom Bush at (703) 693-7483 or the National Committee for Employer Support of the Guard and Reserve at 1-800-336-4590.



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