

LAW REVIEW¹ 26053

September 2026

Your Husband Has the Legal Right To Be Away from his Civilian Job To Perform USMCR Drills.

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Q: My husband is a Marine Corps Reservist. On the civilian side, he is a firefighter for our local fire department. My husband and the other members of the unit are required to drill on the first weekend of every month. My husband has missed three drill weekends because

¹ I invite the reader's attention to [Law Center | ROA](#). You will find more than 2,300 "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 for veterans' benefits administered by the Department of Veterans Affairs (VA), 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. I have dealt with USERRA and the Veterans' Reemployment Rights Act (VRRRA—the 1940 version of the federal reemployment statute) for 44 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. As of 5/1/2026, I have come out of retirement and have joined Maher Legal Services in an "of counsel" role. You can reach me by e-mail at samuel@maherlegalservices.com or by telephone at (708) 468-8155.

³ BA, Texas Christian University, MS American Military University. 29-year veteran of the U.S. Army Judge Advocate General's Corps, former instructor at The Judge Advocate General's Legal Center and School and Command Paralegal, U.S. Army Reserve Command.

the fire department chief refused to give him time off from work, even without pay, for those weekends and threatened to fire him if he missed any scheduled fire department shift to “play soldier” in the USMCR.

My husband’s USMCR commanding officer (CO) is really angry with my husband for missing these drills and has ordered him to make up the drills *without pay*. *Help!*

What is a reservist like my husband supposed to do when he cannot comply with the orders of his Reserve Unit CO without violating the orders of his civilian employer?

My husband loves the Marine Corps and wants to stay involved in the USMCR, but his civilian job, as a firefighter, is our principal means of support for our family. If he must choose between the firefighter job and the USMCR, it is the USMCR that will have to be dropped.

A: Under a federal law called the Uniformed Services Employment and Reemployment Rights Act (USERRA), your husband should not have to choose between the USMCR and his firefighter job—he can do both. Your husband has the right, **legally enforceable in federal court, if necessary, to time off from his civilian job for voluntary or involuntary military training or service.**

If your husband is away from his civilian job for voluntary or involuntary military training or service, he has the right to reemployment in his civilian job if he meets five simple conditions:

- a. Your husband must have left a civilian job (federal, state, local, or private sector) to perform “service in the uniformed services” as defined by USERRA.⁴
- b. Your husband must have given the employer prior oral or written notice.⁵
- c. Your husband’s cumulative period or periods of uniformed service, related to the employer relationship for which he seeks reemployment, must not have exceeded five years.⁶
- d. Your husband must have been released from the period of service without having received a disqualifying bad discharge from the military.⁷
- e. After release from the period of service, your husband must have made a timely application for reemployment with the pre-service employer.⁸

If your husband meets these criteria, he is entitled to reemployment as a matter of federal law, and if the city denies him reemployment or delays his reemployment the city is violating federal law.

Your husband does not need to ask for or obtain his permission to be absent from work for voluntary or involuntary military training or service. He is only required to give notice.

⁴ 38 U.S.C. § 4312(a).

⁵ 38 U.S.C. § 4312(a)(1).

⁶ 38 U.S.C. § 4312(c).

⁷ 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.

⁸ After a period of service that lasted more than 180 days, you have 90 days to apply for reemployment. 38 U.S.C. § 4312(e)(1)(D). After a period of service that lasted fewer than 31 days, like a drill weekend, your husband is required to report back to work at the start of his first regularly scheduled work period on the first full calendar day after he is released from the drill weekend and after the time reasonably required for safe transportation from the drill location to his residence, plus eight hours for rest. 38 U.S.C. § 4312(e)(1)(A).

Section 4331 of USERRA⁹ gives the Department of Labor (DOL) the authority to promulgate regulations about the application of USERRA to state and local governments and private employers. In September 2004, DOL published proposed USERRA regulations in the *Federal Register*, for notice and comment. After considering the comments received and making a few adjustments, DOL published the final regulations in the *Federal Register* in December 2005. The DOL final USERRA regulations are codified in title 20 of the Code of Federal Regulations (CFR), at Part 1002 (20 C.F.R. Part 1002). The most pertinent section is as follows:

1002.87 Is the employee required to get permission from his or her employer before leaving to perform service in the uniformed services?

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.¹⁰

The DOL USERRA regulations also provide:

Is the employee required to accommodate his or her employer's needs as to the timing, frequency or duration of service?

⁹ 38 U.S.C. § 4331.

¹⁰ 20 C.F.R. § 1002.87 (bold question in original).

No. The employee is not required to accommodate his or her employer's interests or concerns regarding the timing, frequency, or duration of uniformed service. The employer cannot reemploy the employee because it believes that the timing, frequency or duration of the service is unreasonable. However, *the employer is permitted to bring its concerns over the timing, frequency, or duration of the employee's service to the attention of the appropriate military authority.* Regulations issued by the Department of Defense at 32 CFR 104.4 direct military authorities to provide assistance to an employer in addressing these types of employment issues. The military authorities are required to consider requests from employers of National Guard and Reserve members to adjust scheduled absences from civilian employment to perform service.¹¹

Q: Freddy Fireman, the fire chief, has complained that my husband's necessary absences from work put a huge burden on the fire department and that the department should not have to put up with this burden. To whom should Mr. Fireman make this complaint?

A: Your husband should give Mr. Fireman the name and contact information of the Commanding Officer of his Marine Corps Reserve unit. Mr. Fireman can make that point to your husband's Commanding Officer. The Commanding Officer can exempt your husband from the requirement to perform a drill period if he or she concludes that exempting him from the training, or allowing him to perform the training at another time, would not detract from the readiness of the unit.

¹¹ 20 C.F.R. § 1002.104 (bold question in original, emphasis by italics supplied).

Mr. Fireman needs to understand that Reserve Component (RC) units train together because they may well be required to go to war together. All or at least the great majority of unit members must train with the unit, every time. If your husband and other unit members do not train with the unit, that will inevitably detract from the effectiveness of the unit. That will mean more lives lost and a greater risk that the unit will not be able to accomplish its mission. Yes, it really is that important that your husband trains with the unit at least the great majority of the time.

Q: Colonel Thelma Jones, USMCR is the Commanding Officer of my husband's reserve unit. She is a part-timer, like my husband. The unit has more than 200 members. She told me that more than 10% of unit members have civilian employers who habitually object to being required to permit unit members to have time off from their civilian jobs for Marine Corps Reserve training and service. Colonel Jones asked me not to give Mr. Fireman her name and contact information. She said that if 20 civilian employers of unit members start calling her regularly at her civilian job, during her working hours, that will endanger her own job. What do you say about that?

A: Colonel Jones makes an excellent point, and I have made exactly that point in Law Review 14009 (January 2014) and Law Review 17064 (June 2017). I have suggested that each Reserve Component needs to designate a full-timer, at the regional or national level, to receive and respond to inquiries and complaints from civilian employers. I have seen no evidence that my suggestion is being implemented, so I reiterate the suggestion now.

Q: Who must notify the civilian employer of an upcoming period of uniformed service?

A: USERRA provides that the notice must be provided by the individual service member *“or an appropriate officer of the uniformed service in which the service is to be performed.”*¹² In Law Review 14009 and Law Review 17064, and other articles, I have suggested that each Reserve Component should designate appropriate officers to notify civilian employers of upcoming service periods. The appropriate officer who is giving the notice should be a full-timer and should be above the level of the Commanding Officer of the Reserve or National Guard unit.

The notice to the employer should contain the following sentence: “If you have questions or complaints, please direct those questions and complaints to me. Please do not harass the individual service member who is your employee.” The individual service member, especially a junior enlisted service member, should not have to face his or her employer’s wrath alone.

Q: Mr. Fireman has complained that my husband’s Marine Corps Reserve service puts an inordinate burden on him, as my supervisor, and on the agency, as my employer. What do you say about that?

A: As I have explained in detail in Law Review 17055 (June 2017), Congress fully understood that this law puts some burdens on civilian employers and supervisors, but that burden is tiny as compared to the far greater burden (sometimes the ultimate sacrifice) voluntarily undertaken by those who serve our country in uniform, and by their families.

Almost two generations ago, in 1973, Congress abolished the draft and established the All-Volunteer Military (AVM). Without a law like USERRA, the services would not be able to recruit and retain a sufficient

¹² 38 U.S.C. § 4312(a)(1) (emphasis supplied).

quantity and quality of young men and women to defend our country. Mr. Fireman: Nobody is drafting you, and nobody is drafting your children and grandchildren. But somebody must defend our country. You should stop your whining about the “burdens” imposed on you, as the civilian supervisor of those who serve in your place and in the place of your offspring. Please see Law Review 17055.

Q: But what about the fact that my husband’s CO has told him that he must make up the missed USMCR drills *without pay*?

A: The unit's position is legally questionable. Reservists are entitled to drill pay for every Inactive Duty Training (IDT) period they perform — typically four pay periods per standard drill weekend. If your husband is being ordered to perform make-up drills, he should be compensated for those drills. The military cannot require unpaid labor from service members. The unit's position specifically appears to violate MCRAMM 1001R.1, available for download at

<https://www.marines.mil/News/Publications/MCPEL/Electronic-Library-Display/Article/900627/mco-1001r1l-w-ch-2/>

Key distinctions to clarify with the command:

Rescheduled drills vs. additional drills: If he's rescheduling missed drills to different dates, those rescheduled drills are still paid IDT periods. The unit must have allocated drill periods (called UTAs or RSTs) to pay him.

Excused vs. unexcused absences: If his absences were properly communicated and approved, they should be excused absences.

Some commands allow "equivalent training" or Rescheduled Training (RST) to make up missed UTAs — but these are still paid.

Unit funding constraints: Sometimes units claim they "ran out of drill pay" or don't have allocated periods. This is an administrative problem the unit must solve, not a reason to require unpaid service.

Immediate steps to take:

Request the policy in writing — Ask the command to cite the specific Marine Corps order or DoD regulation authorizing unpaid make-up drills. If they insist on ordering a Marine to work for free-make them put that in writing.

Contact the Inspector General (IG) — If the unit cannot provide legal authority, file a complaint with the Marine Forces Reserve IG.

Contact ESGR — Call Employer Support of the Guard and Reserve at 1-800-336-4590. While they focus on civilian employer issues, they can sometimes help mediate Reserve Component disputes.

Document everything — Keep copies of all communications with the command about his civilian schedule and any orders directing him to drill.

He should have an honest discussion with his employer too-if he's given notice of when he has drill, they need to let him attend.

Q: Where can I find a lawyer or law firm that fully understands laws like the Servicemembers Civil Relief Act (SCRA), the Uniformed

Services Employment and Reemployment Rights Act (USERRA), the Uniform Code of Military Justice (UCMJ), and other laws that are especially pertinent to those who serve our country in uniform?

A: As of 5/1/2026, I have come out of retirement and have joined Maher Legal Services in an “of counsel” role. This firm has a great team, headed by attorneys John Maher and Kevin Mikolashek, both of whom have served as Army judge advocates for many years. These attorneys and this firm have a great record, and I am proud to join their team.

Here is a link to the Maher Legal Services website:

<https://www.lawyersdefendingwarriors.com/about>.

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ROA is the only national military organization dedicated exclusively to America's reserve components — all eight of them. From the 6,179 members of the Coast Guard Reserve to the 329,705 soldiers of the Army National Guard, ROA exists to serve the nearly 773,000 men and women who answer the call while maintaining civilian lives. No other organization does what we do for the people we serve.

Our roots run deep. On October 2, 1922, veterans of the Great War gathered at Washington's historic Willard Hotel — at the invitation of General of the Armies John J. Pershing — to build something lasting. One of the junior officers in that room was Captain Harry S. Truman, who, as President, signed ROA's congressional charter in 1950. That charter gives us a clear mission: advocate for policies that ensure adequate national security. For more than a century, we've made the case that America's Reserve Components and National Guard are among the most cost-effective pillars of our national defense.

Beyond this library of legal resources, ROA files *amicus curiae* ("friend of the court") briefs in the Supreme Court and other courts, and actively educates service members, military spouses, attorneys, employers, legislators, and others about the legal rights of those who serve — and how to enforce them. We provide this information to all service members, regardless of membership. But it's ROA members — through their dues and contributions — who make it possible.

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If you are currently serving, or have ever served, in any of America's eight uniformed services, you are eligible to join ROA — and membership starts at just \$20 for a full year, or \$450 for life. Officers and enlisted personnel alike qualify, whether your service was in the Active Component, the National Guard, or the Reserve. ROA has also recently expanded eligibility to include ancestors and lineal descendants and spouses, widows, and widowers of past or present service members, so families can stand with those who serve. Join online at [Reserve Organization of America - ROA](#) or call 800-809-9448.

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