

LAW REVIEW¹ 26058

September 2026

Don't Shirk Your Responsibilities to Your Civilian Employer. It Can Get You Fired, Compliant With USERRA.

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

1.0—USERRA generally.

1.3.1.3—Timely application for reemployment.

1.8—Relationship between USERRA and other laws/policies.

In 1997, the Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated the “Law Review”

¹ I invite the reader's attention to [Law Center | ROA](#). 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), 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 80% 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 (VRRA—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 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. As of 5/1/2026, I have come out of retirement and have affiliated with 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.

column on our website, [Law Center | ROA](#). We add new articles each month. We now have more than 2,000 articles on our website, along with a detailed subject index, to facilitate finding articles about specific topics. The articles are available for free to everyone, not just ROA members.

The majority of the articles are about the Uniformed Services Employment and Reemployment Rights Act (USERRA). We also have articles about the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouses' Protection Act (USFSPA), the chapters of title 38 of the United States Code 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.

To have the right to reemployment after a short, intermediate, or long period of absence from your civilian job for uniformed service, you must meet the USERRA conditions. As I have explained in Law Review 24047 (October 2024) and many other articles, you must meet five conditions to have the right to reemployment under USERRA:

- 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.³
- b. You must have given the employer prior oral or written notice.⁴

³ 38 U.S.C. § 4312(a).

⁴ 38 U.S.C. § 4312(a)(1).

- 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.⁵
- d. You must have been released from the period of service without having received a disqualifying bad discharge from the military.⁶
- e. After release from the period of service, you must have made a timely application for reemployment with the pre-service employer.⁷

Section 4312(e) of USERRA⁸ establishes the deadline for you to report back to work or apply for reemployment after you are released from a period of uniformed service. I have placed the entire text of section 4312(e) at the end of this article.

After a short period of uniformed service (fewer than 31 days), like a drill weekend or a traditional two-week annual training period, you are required to “report to the employer ... not later than the beginning of the first full regularly scheduled work period on 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.”⁹

For example, if you complete your drill weekend at 5 pm on Sunday, and if your drive from the Reserve Center to your home only takes two

⁵ 38 U.S.C. § 4312(c). See generally Law Review 26020 (May 2026) for a detailed discussion of what counts and what does not count in exhausting your five-year limit.

⁶ 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.

⁷ 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). Shorter deadlines apply after shorter periods of service.

⁸ 38 U.S.C. § 4312(e).

⁹ 38 U.S.C. § 4312(e)(1)(A)(i).

hours, you must report back to work at the start of the Monday shift. If your travel from the Reserve Center to your home takes several hours, the deadline for you to report back to work is extended to the start of the Tuesday shift.

After a period of uniformed service that lasted for 31-180 days, you must apply for reemployment within 14 days after your release from the period of service.¹⁰ After a period of service that lasted for 181 days or more, you must apply for reemployment within 90 days after the date that you were released from the period of service.¹¹

Law Review 178 is about a real situation. The Army Reservist was called to active duty with his unit, and he expected to be on active duty for about 18 months. Because he failed the mobilization physical exam, he was released after just 18 days. He thought that he had 30 days to apply for reemployment, but in fact he had only a day or two to report back to work, because his period of uniformed service lasted fewer than 31 days. He relied on bum scoop and lost his civilian job.

We are republishing Law Review 178 now because it makes an essential point and because 21 years have passed since we published the article. We now have more than 2,000 “Law Review” articles available for free on our website, [Law Center | ROA](#). More than 1,400 of those articles are about USERRA.

As a serving member of the National Guard or Reserve, you need to understand your USERRA rights and the conditions that you must meet

¹⁰ 38 U.S.C. § 4312(e)(1)(C).

¹¹ 38 U.S.C. § 4312(e)(1)(D).

to have those rights and the steps you need to take if your employer violates USERRA. I suggest that you start with our Law Review 24047 (October 2024).

If you have reviewed our Law Review Library, including the subject index, and you cannot find an answer to your question, you may contact me by email at SWright@roa.org. I will not charge you for the consultation, and I will not insist that you join ROA before I address your issue by email or telephone. If you need legal advice and representation, I will refer you to a qualified attorney or to the Veterans' Employment and Training Service of the United States Department of Labor (DOL-VETS).

If you are not already a member of the Reserve Organization of America (ROA), I will ask you to join. ROA needs to recruit new members who are currently serving in our nation's uniformed services if the organization continues providing these valuable services for the next generation.

I am the author of more than 80% of the "Law Review" articles that ROA has published over the last 29 years, but I am 75 and will not be around forever to author and update these articles. We are always looking for "other than Sam" articles by other lawyers.

LAW REVIEW 178
June 2005
Bum Scoop Can Have Bad Consequences.

By Captain Samuel F. Wright, JAGC, USNR¹²

Q: I was called to active duty for what was expected to be about 18 months on February 19, 2005, and I gave proper notice to my civilian employer. In my last day at work in my civilian job, I suffered what I thought was a very minor injury on the job. I did not even report it to my supervisor, because I thought that it was minor, but it turned out that the injury was much more severe than I had thought.

That injury caused an Army doctor to determine that I was not qualified for mobilization, and I was sent home March 9, just 18 days after I entered active duty. The Army gave me an airplane ticket home, and I arrived home in the early evening of Wednesday, March 9. A senior noncommissioned officer told me that after leaving active duty I had 30 days to communicate to my civilian employer my availability to return to work, and I contacted the employer Wednesday, March 16, just seven days after leaving active duty.

The employer, however, said that I was too late in reporting back to work, that my position had been filled, and that I am out of a job. Help!

A: As I explained in Law Review 7, the deadline to report back to work or apply for reemployment depends upon the duration of the period of service from which you are returning. If the period of service is fewer than 31 days, you are required to report for work “not later than the

¹² My military title was listed for purposes of identification only. The views expressed in this article are my own views and not necessarily the views of the Department of the Navy, the Department of Defense, or the United States Government. This disclaimer was included because I was not yet retired from the Navy Reserve when this article was published in 2005. I retired from the Navy Reserve on 4/1/2007.

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 from the place of that service to the person's residence.” [38 U.S.C. 4312(e)(1)(A)(i).]

More time is provided after longer periods of service. In determining the deadline that applies, it is the actual duration and not the expected duration of the period of service that controls. You expected to be on active duty for 18 months, but as it turned out you were only on active duty for 18 days. You arrived home on the evening of Wednesday, March 9, so you should have reported back to work on Thursday, or certainly by Friday. You did not contact the employer until a week later, so you are probably out of luck.

USERRA provides for an extension of up to two years, on the deadline to report for work or apply for re-employment, in the case of a “person who is hospitalized for, or convalescing from, an injury or illness incurred in, or aggravated during, the performance of service in the uniformed services.” [38 U.S.C. 4312(e)(2)(A) (emphasis supplied).] This deadline extension does not apply to you if you incurred an injury before you entered active duty and did not aggravate it during your active duty period.

I have included this article in this column as a “word to the wise.” I have been speaking and writing about the reemployment statute for almost a quarter century, because I am aware that there is a lot of “bum scoop” being spread around by folks who ought to know better, and the price is paid by folks like you, who rely on what they are told.

USERRA is a great law, but it is very important that you “dot the I's and cross the T's.” I initiated this column to help Reserve Component members do what they need to do to protect their rights.

Q: It has turned out that my injuries were quite severe, and I am unable to work, at least for some months. I have retained an attorney and have filed a claim against my civilian employer under our state's workers' compensation law. The employer is contesting my right to this compensation on two grounds. First, the employer denies that any on-the-job injury took place, because I did not report it at the time. Second, the employer claims that the injury took place while I was in the Army, not while I was at work at my civilian job. This is a real mess.

A: Another lesson to be learned from this situation is that if you suffer an injury at work, you should report it to your supervisor and fill out the required paperwork within an hour or two after the accident, even if it seems that your injuries are quite minor. You should also report to the company doctor or nurse to be checked out.

The other point here is that you cannot have it both ways. You cannot claim, for reemployment purposes, that you suffered or aggravated the injury while you were on active duty, for purposes of excusing your delay in reporting back to work, while claiming, for workers' compensation purposes, that the injury is the result solely of an accident at work.

End of the reprint of the 2005 Law Review article.

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>.

Join the Organization That Fights for You.

This article is one of more than 2,000 "Law Review" articles available at [Law Center | ROA](#)— a free legal resource that the Reserve Organization of America (ROA) has built and maintained since 1997, adding new articles every month.

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 federal 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.

Your membership makes the mission possible.

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 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.

If you are not eligible for membership but believe in this mission, your financial contribution directly funds this resource and the advocacy work that protects those who serve. Donations may be mailed to:

Reserve Organization of America
1 Constitution Ave. NE
Washington, DC 20002

Here is the entire text of section 4312(e) of USERRA:

(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.

(2)

(A)

A person who is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service in the uniformed services shall, at the end of the period that is necessary for the person to recover from such illness or injury, report to the person's employer (in the case of a person described in subparagraph (A) or (B) of paragraph (1)) or submit an application for reemployment

with such employer (in the case of a person described in subparagraph (C) or (D) of such paragraph). Except as provided in subparagraph (B), such period of recovery may not exceed two years.

(B)

Such two-year period shall be extended by the minimum time required to accommodate the circumstances beyond such person's control which make reporting within the period specified in subparagraph (A) impossible or unreasonable.

(3)

A person who fails to report or apply for employment or reemployment within the appropriate period specified in this subsection shall not automatically forfeit such person's entitlement to the rights and benefits referred to in subsection (a) but shall be subject to the conduct rules, established policy, and general practices of the employer pertaining to explanations and discipline with respect to absence from scheduled work.

38 U.S.C. § 4312(e).