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Am I Eligible for 180 Days of Transition Health Care Coverage (TRICARE) When I Complete my Tour of Full-Time National Guard Duty?
By Captain Samuel F. Wright, JAGC, USN (Ret.)[2]

1.1.2.2—USERRA applies to small employers.
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[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 (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. You can reach me by e-mail at SWright@roa.org.

Q: I am a Sergeant in the Army National Guard (ARNG) of my home state and a member of the Reserve Organization of America (ROA).[3] I have read with great interest many of your "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA) and other laws that are especially pertinent to those of us who serve our country in uniform.

I have read with great interest your Law Review 26024 (June 2026) and your Law Review 26050 (August 2026), about the issue of Transition Assistance Management Program (TAMP) for 180 days of free Department of Defense (DOD) medical and dental coverage, under the TRICARE program, and I have also read your detailed discussion of this important matter on your organization's website.[4]

In May 2023, I started a new civilian job working for a private-sector company—let us call it Coors Heineken & Schlitz Incorporated or CHSI. My pay at that company was unsatisfactory, but CHSI did have a good policy of providing medical and dental insurance to employees, and I took advantage of that program during the 4.5 months that I worked for CHSI in 2023.

[3] Yes, enlisted personnel as well as officers are eligible to join ROA. Yes, soldiers in the ARNG, just like soldiers in the Army Reserve (USAR), are eligible to join ROA.

[4] https://tamp.roa.org/?_gl=1*w24upi*_ga*MTA2OTQwNjQyNy4xNzg1MzIzMDA1*_ga_NC4G93RZWM*czE3ODc0NDA1MTEkbzE1JGcxJHQxNzg3NDQwNjgxJGo2MCRsMCRoMA..

Health insurance coverage is very important to me because I have a disabled husband and three children. One of the children has serious health concerns.

In late September 2023, I left my CHSI job to start a three-year period of Full-Time National Guard Duty (FTNGD), from 10/1/2023 through 9/30/2026. As scheduled, I completed my FTNGD period on 9/30/2026, and I have been seeking other civilian employment. I really do not want to return to CHSI, and I am uncertain as to whether I have the right to reemployment at that company under USERRA.

When I left full-time military duty on 9/30/2026, I inquired about obtaining the 180-day TAMP benefit. The personnel office told me that ARNG soldiers on Full-Time National Guard Duty (FTNGD) are not eligible for TAMP. Was the personnel office correct in stating that I was not eligible for TAMP?

A: Unfortunately, what the personnel office told you was correct. Under most circumstances, ARNG soldiers and Air National Guard (ANG) airmen are not eligible for TAMP. Section 1145(a)(2)(B) of title 10 of the United States Code sets forth the eligibility for TAMP as follows:

> A member of a reserve component who is separated from **active duty** to which called or ordered under section 12304b of this title or a provision of law referred to in section 101(a)(13)(B) of this title if the active duty is active duty for a period of more than 30 days.[5]

[5] 10 U.S.C. § 1145(a)(2)(B) (emphasis supplied).

When a statute or a title of the United States Code uses a word or phrase and defines that word or phrase, the statutory definition controls for purposes of that statute or title of the United States Code. Section 101 of title 10 defines many words and phrases that are used in title 10. The term "active duty" is defined as follows:
follows:

> The term "active duty" means full-time duty in the active military service of the United States, including sustained duty in the Space Force. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. **Such term does not include full-time National Guard duty.**[6]

You were not separated from **active duty** on 9/30/2026. You were separated from **full-time National Guard duty**. Accordingly, you are not entitled to TAMP coverage for medical care for 180 days after 9/30/2026. Providing TAMP coverage for ARNG soldiers and ANG airmen leaving full-time National Guard duty will require a statutory amendment. Together with other military associations, ROA is advocating for such an amendment.

Q: Time out! The definitions section of title 37 of the United States Code defines the term "active duty" as follows:

> The term "active duty" means full-time duty in the active service of a uniformed service, and includes full-time training duty,

[6] 10 U.S.C. § 101(d)(1) (emphasis supplied).

annual training duty, **full-time National Guard duty,** and attendance, while in active service, at a school designated as a service school by law or by the Secretary concerned.[7]

So which is it? Title 10 says that full-time National Guard duty is not active duty. Title 37 says that full-time National Guard duty is active duty. Which one controls?

A: All permanent federal statutes other than private-relief laws are codified in the United States Code. Many statutes include definitions of some (certainly not all) of the terms used in the statute. When a word or phrase is defined in the United States Code, here is the order of priority for the application of definitions:

a. The definition of the word or phrase in that specific federal statute, like the Uniformed Services Employment and Reemployment Rights Act (USERRA).
b. The definition in that specific title of the United States Code.
c. The definition in another title of the United States Code.[8]

The definition of "active duty" in title 10 of the United States Code controls the interpretation of provisions in title 10, including section 1145(a)(2)(B) of title 10, which governs eligibility for TAMP benefits. For purposes of title 37, which governs pay for members of the uniformed services, full-time National Guard duty qualifies as "active duty." But for purposes of title 10, including eligibility for TAMP benefits, full-time National Guard duty is not "active duty."

[7] 37 U.S.C. § 101(18) (emphasis supplied).
[8] If the word or phrase is not defined in the United States Code, a court must look to a general purpose dictionary published at roughly the same time as the enactment of the specific provision of the United States Code that is under consideration.

Yes, this stuff is complicated, and there are many provisions in the vast United States Code that seem to contradict other provisions in the Code. These provisions were drafted at different times, for different purposes, by different people, and sometimes by different committees of the United States Senate and House of Representatives. The courts must sort this out and try to harmonize seemingly contradictory provisions.

Q: Under what circumstances is a National Guard soldier or airman entitled to TAMP coverage after leaving full-time National Guard duty?

A: Section 1145 of title 10 provides:

> A member of the National Guard who is separated from full-time National Guard Duty to which called or ordered under section 502(f) of title 32 for a period of active service of more than 30 days to perform duties that are **authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency** declared by Congress or the President and supported by Federal funds [is entitled to TAMP coverage].[9]

Some ARNG soldiers and ANG airmen on full-time National Guard duty fit within these parameters. Section 1145(a)(2)(G) of title 10, quoted above, is an example of one of the instances where an ARNG soldier or ANG airman on full-time National Guard duty is entitled to TAMP coverage.

[9] 10 U.S.C. § 1145(a)(2)(G) (emphasis supplied).

When considering benefits for ARNG soldiers and ANG airmen, one must also consider title 32 of the United States Code, which governs the National Guard. The definitions section of title 32 defines the term "full-time National Guard duty" as follows:

> "Full-time National Guard duty" means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States **in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316 , 502 , 503 , 504 , or 505 of this title** [title 32] for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.[10]

Most ARNG soldiers and ANG airmen on full-time military duty are not on "full-time National Guard duty." Most are on federal active duty under various sections of title 10, like section 12301(a) or section 12301(d). When determining the benefits due to an ARNG soldier or ANG airman, one must look to the specific military orders for that individual for the relevant period of service. Most ARNG soldiers and ANG airmen who are on full-time military duty are eligible for TAMP benefits when they leave full-time military service.

Q: I really need health insurance coverage because one of my three children has serious health concerns. I really do not want to return to work for CHSI, but perhaps I must do that now to get the health

[10] 32 U.S.C. § 101(19) (emphasis supplied).

insurance coverage. When I left my CHSI job in late September 2023, I told my supervisor that I was leaving my civilian job to perform full-time National Guard duty. I did not say anything about returning to work at CHSI after completing my three-year tour of full-time National Guard duty, and I did not mention USERRA. Am I entitled to reemployment at CHSI?

A: You are entitled to reemployment at CHSI if you have met or will meet the five USERRA conditions for reemployment:

a. You must have left the job to perform service in the uniformed services, as defined by USERRA.[11]
b. You must have given the employer prior oral or written notice of your impending absence to perform service.[12]
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.[13]
d. You served honorably, and you were released from the period of service without having received a disqualifying bad discharge from the military.[14]

[11] 38 U.S.C. § 4312(a).
[12] 38 U.S.C. § 4312(a)(1). No specific amount of advance notice is required, but of course the practical advice is to give the employer as much notice as possible. "No notice is required under subsection (a)(1) if the giving of such notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable." 38 U.S.C. § 4312(b)(1).
[13] 38 U.S.C. § 4312(c). There are nine exemptions from the five-year limit. That is, there are nine kinds of service that do not count toward exhausting your five-year limit with respect to that employer relationship. Law Review 26020 (June 2026) explains in detail what counts and what does not count in exhausting your five-year limit with respect to a specific employer relationship.
[14] 38 U.S.C. § 4304. Disqualifying bad discharges include punitive discharges, awarded by court martial for serious crimes, and other-than-honorable administrative discharges.

e. You made a timely application for reemployment with the pre-service employer after release from the period of service.[15]

It is clear that you left your CHSI job in September 2023 to report to full-time National Guard duty. That means that you left your civilian job to perform "service in the uniformed services" as defined by USERRA. USERRA defines that term 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 (50 U.S.C. 1601 et seq.), 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 (42 U.S.C. 5170), 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 a period for which a person is absent from a position of employment due to an appointment into service in the Federal Emergency Management

[15] After a period of service of 181 days or more, you have 90 days to apply for reemployment. 38 U.S.C. § 4312(e)(1)(D). Shorter deadlines apply after shorter periods of service.

> Agency as intermittent personnel under section 306(b)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5149(b)(1)), and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.[16]

Full-time National Guard duty is expressly included in USERRA's definition of "service in the uniformed services." Your three-year tour of full-time National Guard duty clearly qualifies you for reemployment under USERRA.

You have not yet made a timely application for reemployment,[17] but the deadline for doing so has not yet passed. After a period of service of 181 days or more, you have 90 days to apply for reemployment.[18] Because you were released from the period of service on 9/30/2026, the deadline for you to apply for reemployment is 12/29/2026.[19]

Q: I contacted Mr. Joseph Coors, the owner-operator of CHSI. He said that the company has only ten employees and has never had more than 14 employees. He said: "All those damned federal laws that limit the rights of employers only apply to companies that have 15 or more employees." He said that means that USERRA does not apply to his tiny company. Is Mr. Coors correct?

[16] 38 U.S.C. § 4303(13) (emphasis supplied).
[17] Your contact with Mr. Coors probably amounts to a timely application for reemployment, but out of an abundance of caution I suggest that you make a formal application for reemployment before 12/29/2026.
[18] 38 U.S.C. § 4312(e)(1)(D).
[19] Thirty-one (31) days in October, 30 days in November, and 29 days in December equals 90 days.

A: No, Mr. Coors is wrong. Other federal laws have such a threshold for applicability, but the federal reemployment statute does not have and has never had such a threshold. You only need to have one employee to be an "employer" for purposes of the federal reemployment statute.[20]

Q: Mr. Coors told me that he has ten employees, and each one of them is doing a great job. He said that he is not willing to reemploy me because doing so would necessarily mean displacing another employee who is doing a fine job. What do you say about that?

A: Because you meet the five USERRA conditions, CHSI is required to reemploy you promptly in an appropriate position of employment *even if that means displacing or laying off another person.* The pertinent section in the DOL USERRA regulation is as follows:

> Even if the employee is otherwise eligible for reemployment benefits, the employer is not required to reemploy him or her if the employer establishes that its circumstances have so changed as to make reemployment impossible or unreasonable. For example, an employer may be excused from reemploying the employee where there has been an intervening reduction in force that would have included that employee. *The employer may not, however, refuse to reemploy the employee on the basis that another employee was hired to fill the reemployment position during the employee's absence, even if reemployment might require the termination of that replacement employee.*[21]

[20] *Cole v. Swint,* 961 F.2d 58, 60 (5th Cir. 1992).
[21] 20 C.F.R. § 1002.139(a) (emphasis supplied).

If filling the vacancy defeated the right to reemployment of the returning veteran, USERRA would be of little value. Many old and recent cases show that the right to prompt reemployment upon returning from service is not contingent on the existence of a vacancy at that time. The United States Court of Appeals for the First Circuit[22] has held:

> Finally, we note that USERRA affords broad remedies to a returning servicemember who is entitled to reemployment. For example, 20 C.F.R. 1002.139 unequivocally states that "the employer may not refuse to reemploy the employee on the basis that another employee was hired to fill the reemployment position during the employee's absence, even if reemployment might require the termination of that replacement employee."[23]

The United States Court of Appeals for the Federal Circuit[24] has held:

> The department [United States Department of Veterans Affairs, the employer and defendant] first argues that, in this case, Nichols' [Nichols was the returning veteran and plaintiff] former position was "unavailable" because it was occupied by another and thus it was within the department's discretion to place Nichols in an equivalent position. This is incorrect. Nichols' former position is not unavailable because it still exists, even if it is

[22] The 1st Circuit is the federal appellate court that sits in Boston and hears appeals from district courts in Maine, Massachusetts, New Hampshire, Puerto Rico, and Rhode Island.
[23] *Rivera-Melendez v. Pfizer Pharmaceuticals LLC,* 730 F.3d 49, 55-56 (1st Cir. 2013).
[24] The Federal Circuit is the specialized federal appellate court that sits in our nation's capital and has nationwide jurisdiction over certain kinds of cases, including appeals from the Merit Systems Protection Board.

> occupied by another. A returning veteran will not be denied his rightful position because the employer will be forced to displace another employee. … Although occupied by Walsh, Nichols' former position is not unavailable and it is irrelevant that the department would be forced to displace Walsh to restore him.[25]

Q: If I exercise my right to reemployment with CHSI, what am I entitled to with respect to reinstatement of my health insurance coverage for myself and my family?

A: Section 4317(b) of USERRA provides:

> **(1)**
>
> Except as provided in paragraph (2), in the case of a person whose coverage under a health plan was terminated by reason of service in the uniformed services, or by reason of the person's having become eligible for medical and dental care under chapter 55 of title 10 by reason of subsection (d) of section 1074 of that title, an exclusion or waiting period may not be imposed in connection with the reinstatement of such coverage upon reemployment under this chapter if an exclusion or waiting period would not

[25] *Nichols v. Department of Veterans Affairs,* 11 F.3d 160, 163 (Fed. Cir. 1993). For other cases holding that the lack of a current vacancy does not excuse the employer's failure to reemploy the returning veteran, I invite the reader's attention to *Cole v. Swint,* 961 F.2d 58 (5th Cir. 1992); *Goggin v. Lincoln-St. Louis,* 702 F.2d 698, 704 (8th Cir. 1983); *Davis v. Crothall Services Group,* 961 F. Supp. 2d 716, 730-31 (W.D. Pa. 2013); *Serricchio v. Wachovia Securities LLC,* 556 F. Supp. 2d 99, 107 (D. Conn. 2008); *Murphree v. Communication Technologies, Inc.,* 460 F. Supp. 2d 702, 710 (E.D. La. 2006); *Fitz v. Board of Education of the Port Huron Area Schools,* 662 F. Supp. 1011 (E.D. Mich. 1985); *Green v. Oktibbeha County Hospital,* 526 F. Supp. 49 (N.D. Miss. 1981); *Hembree v. Georgia Power Co.,* 104 L.R.R.M. (BNA) 2535 (N.D. Ga. 1979), affirmed in part, reversed in part on other grounds, 637 F.2d 423 (5th Cir. 1981); *Jennings v. Illinois Office of Education,* 97 L.R.R.M. (BNA) 3027 (S.D. Ill. 1978, judgment affirmed, 589 F.2d 935 (7th Cir. 1979); and *Muscianese v. U.S. Steel Corp.,* 354 F. Supp. 1394, 1402 (E.D. Pa. 1973).

have been imposed under a health plan had coverage of such person by such plan not been terminated as a result of such service or eligibility. This paragraph applies to the person who is reemployed and to any individual who is covered by such plan by reason of the reinstatement of the coverage of such person.

(2)

Paragraph (1) shall not apply to the coverage of any illness or injury determined by the Secretary of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services.

(3)

In the case of a person whose coverage under a health plan is terminated by reason of the person having become eligible for medical and dental care under chapter 55 of title 10 by reason of subsection (d) of section 1074 of that title but who subsequently does not commence a period of active duty under the order to active duty that established such eligibility because the order is canceled before such active duty commences, the provisions of paragraph (1) relating to any exclusion or waiting period in connection with the reinstatement of coverage under a health plan shall apply to such person's continued employment, upon the termination of such eligibility for medical and dental care under chapter 55 of title 10 that is incident to the cancellation of

such order, in the same manner as if the person had become reemployed upon such termination of eligibility.[26]

Q: Mr. Coors, the owner-operator of CHSI, will be really angry if I insist that he reemploy me, even if that means laying off another valued employee, and then I leave CHSI a few weeks later to take a new job that offers excellent health insurance coverage and that pays better than the CHSI job. What do you think about that?

A: Let him be mad. You have the legal right to reemployment at CHSI. If you cannot quickly find another job with health insurance coverage for your sick child, you should quickly apply for reemployment at CHSI and get health insurance coverage for your children, your spouse, and yourself.

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.

[26] 38 U.S.C. § 4317(b). See also Law Review 19042 (May 2019) and Law Review 11007 (January 2011) for a detailed discussion of the right to reinstatement of employer-provided health insurance upon reemployment.

Here is a link to the Maher Legal Services website:

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

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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.

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Reserve Organization of America
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