

Spotlight on Your Legal Rights while on Active Duty

Facts about the Soldiers' and Sailors' Civil Relief Act and the Uniformed Services Employment and Reemployment Act

ABA Standing Committee on Legal Assistance for Military Personnel

About This Pamphlet

Reservists in the various branches of the U.S. Armed Forces have special protections available to them so that they are not unnecessarily and unfairly hurt financially simply because they have undertaken this important obligation. Whether in a time of peace or time of war, reservists may find themselves away from their civilian lives with little notice and little opportunity to prepare, and may well find that their military salary cannot support their families in the lives they had been leading just weeks earlier. And employers – or potential employers – may not be willing to hire or protect the jobs of reservists because of the risk that the employee will be called away... unless the law tells them they must.

The Soldiers' and Sailors' Civil Relief Act and the Uniformed Services Employment and Reemployment Rights Act were passed to address both of these concerns. This pamphlet sets out information about the basic protections you have under each law. It is the result of a joint initiative between the American Bar Association and the Reserve Officers Association to provide you with general information concerning some of your legal rights as a reservist or member of the National Guard who has been or will be mobilized in support of Operation Enduring Freedom.

This information does not substitute for effective legal counsel should your individual circumstance require such assistance.

About Operation Enduring LAMP

Following the September 11 terrorist attacks in New York and Washington, D.C., active duty military personnel have been deployed, and tens of thousands of reservists and members of the National Guard have been called up for active duty. If the mobilization begins to involve even larger numbers of personnel, military legal assistance offices will need help from the private bar in order to put the legal affairs of mobilized personnel and their families in order, particularly when they live a great distance from a military installation where access to military legal assistance would be inconvenient.

The American Bar Association Standing Committee on Legal Assistance for Military Personnel (LAMP), in response to a request from the Armed Forces, launched Operation Enduring LAMP. The project is helping to organize and educate civilian lawyers who want to provide *pro bono* legal assistance to active duty personnel and reservists who are recalled to active duty.

You Have Rights

If you are called to active duty, you are protected by the Soldiers' and Sailors' Civil Relief Act (SSCRA) and the Uniformed Services Employment and Reemployment Rights Act (USERRA) unless you are a National Guard member serving in a non-federal status. These important laws give you and your family the special help you may need to meet your legal and financial obligations while you serve your country, and help ease your eventual return to civilian life.

Soldier' and Sailors' Civil Relief Act

I'm about to go on active duty. How can I get out of a rental agreement?

If you signed an agreement to rent a home, farm, or business premises that you or your family have actually begun using, you can get out of the lease. But simply telling your landlord is not enough; you must give written notice after you receive your orders for active duty. And it will take some time for your obligation to end. If you have a month-to-month lease, once you give written notice, the lease will end 30 days after the next rental payment is due. All other kinds of leases terminate on the last day of the month after the month in which proper notice is given.

Can I get my security deposit or prepaid rent back?

If you've paid rent in advance, your landlord should refund it. You should also get your security deposit back – unless, of course, you have damaged the property.

Can I be evicted while I am on active duty?

Not without a court order, if your rent is \$1,200 per month or less. And if your landlord tries to get a court order, you may ask the court to delay the eviction for up to three months. The court will grant the stay if you can prove that your ability to pay the rent was "materially affected" by either your or your spouse's military service.

What about my car payments or furniture rentals?

If you signed an installment contract to purchase, or to lease with intent to purchase, before being called up, the seller will need to get a court order before repossessing the property or terminating the contract. And you will be protected if your ability to make the payments is "materially affected" by your active duty service.

Can I stop paying on my credit cards?

No. Your obligation to pay your debts is unchanged. But – and this is very important – the interest rate on purchases you made before going on active duty goes down to 6 percent – unless your creditor can prove that your ability to pay has not been "materially affected" by going on active duty.

What about mortgage payments?

Your mortgage rate will drop to 6 percent, and you are protected against foreclosure on property you purchased before being called up, if your ability to pay has been "materially affected" by your active duty.

What about pending court cases?

If you are the plaintiff or defendant in a civil case that began before you were called to active duty, you are entitled to a stay if the court finds that your ability to prosecute or defend the case is "materially affected" by your active duty service. Courts, however, are reluctant to delay proceedings for long periods of time, and they require service members to be diligent in their efforts to appear in court. You will need to show the court that your military duties prevent you from appearing to present or defend your case. You'll probably need to sign and file an affidavit setting out all the facts and circumstances to help make your case for a stay of proceedings.

Important note: These protections do not apply to criminal proceedings.

What if someone sues me while I'm on active duty?

You have some protection against "default judgments" that could result from your being unaware that a suit was filed against you or being unable to do anything about it soon enough. The person suing you has to file an affidavit regarding your military status, and if he claims that you are not on active duty when you really are he will be liable for a fine of \$1,000. If the affidavit states that you are on active duty, the court will appoint a lawyer to determine if your circum-

stances justify a stay of proceedings. However, that lawyer can't represent you in the actual lawsuit. When the case does go forward, you will still have to hire a lawyer to represent you.

What if I cannot pay my income taxes because of a call to active duty?

If your ability to pay federal or state income taxes is "materially affected" by your active duty service, collection of your taxes can be deferred for up to six months after the end of your service. You will not have to pay interest or penalties because of the delay.

Do states collect income tax on my military income? What if I am stationed in a state I don't live in?

Your military income is taxable only by the federal government and your state of legal residence – the place where you usually live, vote, and pay taxes. Your legal residence does not change simply because you have been stationed in another state, and the state where you are stationed cannot impose state income taxes on your military pay as long as another state is your legal residence.

What if I cannot pay my life insurance premiums?

If you can no longer pay your premiums on commercial life insurance purchased prior to entry into the service, the government may guarantee the payment of the premiums, or require that the insurance carrier treat the unpaid premium as a loan against the policy. Upon leaving active duty, you would have up to two years to pay the premiums.

What if I cannot afford to make payments on my loans because I was called to active duty?

If you file a petition with the court, it may "stay" or suspend payments on obligations incurred prior to active duty. To obtain relief, you must make application to the court during the period of military service, or within six months after release from active duty, and you must establish that your ability to pay the loan is "materially affected" by reason of your active duty service.

Are there any other provisions of the SSCRA I should know about?

If you have invoked SSCRA protections, adverse financial information may not be reported against you or used to deny you credit in future financial arrangements. If you have professional liability insurance, your policy will be suspended while you are on active duty and your premiums refunded for that time; once you return to civilian life, you are guaranteed reinstatement of the insurance. Similarly, any health insurance coverage you had must be reinstated on your return.

Wow! Those are powerful protections. In what jurisdictions does the SSCRA apply?

Most SSCRA provisions apply throughout the United States and its territories. However, the stay of proceedings and default judgment provisions only apply to civil proceedings in all state and federal courts in the United States and its territories. They do not apply to criminal proceedings or administrative actions.

What should I do if I have other questions?

Please consult a legal assistance attorney or private attorney of your choice as soon as possible. Your lawyer can answer many questions and help you to make a fair and intelligent decision about your choices, options and alternatives. Military legal assistance offices stand ready, willing and able to help you in these matters.

Uniformed Services Employment and Reemployment Rights Act

Am I protected under USERRA?

You are protected if you have a civilian job, you give your employer timely notification of your military duty, and you report back to work in a timely manner.

How much notice do I have to give?

You have to give your employer written or oral notification before you go on duty, unless that is not possible because of military necessity. You are strongly encouraged to notify your employer of any "window" of anticipated military activity, or when you have applied for orders, or if you are notified that you might be recalled involuntarily. When you apply for voluntary orders and give notice, you should be sensitive to your employer's scheduling problems, and try to submit requests for orders during times that are not peak business seasons and are not during the most popular vacation cycles.

Are temporary jobs protected?

Reemployment rights are provided even if your civilian job is described as "temporary," unless the job was for a brief period and you could not have reasonably expected it to continue for any significant length of time.

Do I have reinstatement rights when I get back from voluntary military service?

Yes. USERRA applies to both voluntary and involuntary service. Involuntary service does not count against your five year limit (see next question), and even if your service is voluntary it doesn't count against the limit if your Service Secretary says it was for the same "operational mission" for which other Reservists have been called involuntarily.

Is there a limit to the amount of active duty I can perform and still have reemployment rights?

Yes - one employer only has to support up to 5 years total voluntary military service for any one employee. That total doesn't include involuntary recall to active duty, drills (inactive duty training), annual training, or additional training requirements determined and certified in writing by your Service Secretary as necessary for professional development or for completion of skill training or retraining.

How does military service affect my status or seniority in the workplace?

If your absence was for service in a uniformed service, you cannot be treated as if you were absent from the workplace. Your employer must reinstate the privileges and status you would have earned by length of service if you had been there all along.

What about my pension or thrift plan?

Your employer is not required to allow you to continue pension contributions while you're away from the work site, but some employers might choose to offer this benefit. Once you return, however, your employer must allow you to contribute to the pension plan any amount you would have contributed if you had not been gone. You have three times the length of your service (up to a maximum of 5 years) to make the payments, and within that same time frame your employer has to provide whatever funding the company is supposed to make.

What about health insurance?

If you are gone less than 30 days, your benefits continue as if you had never left. For an absence of 31 days or more, your coverage stops unless you elect to pay for COBRA-like coverage, which can continue for a period of up to 18 months. Your health insurance must be reinstated the day you come back to work, with no waiting period.

Do I accrue vacation days or sick days while I'm on military leave of absence?

Not unless your employer chooses to offer that as an additional benefit. An employer is not required under USERRA to provide any paid benefit when an employee is not working at the worksite.

How long do I have to return to work after being on active duty?

The time limits for returning to work depend on the duration of the orders. The rules are:

• For service of 1 to 30 days, you must return to work at the beginning of the next regularly

scheduled work day or during that portion of the next regularly scheduled shift that would fall 8 hours after the end of your active duty period, adding in a reasonable amount of time to get home from the active duty assignment.

- For service of 31 to 180 days, you must apply for reinstatement no later than 14 days after completion of military duty.
- For service of 181 or more days, you must apply for reinstatement no later than 90 days after completion of military duty.

What if I don't return to work in a timely manner?

If you don't return to work in a timely manner, you are subject to the same personnel policies and practices your employer has for other unexcused absences.

What if I have an accident, or I'm delayed by lack of military transportation, or some other problem makes it impossible for me to report back in a timely manner?

You must report back to work as soon as possible. If the reason for your delay is not related to your military duties, you are subject to the same personnel policies and practices your employer has for other unexcused absences.

What if I am injured or disabled during military duty?

The deadline for reinstatement may be extended for up to 2 years for persons who are convalescing due to a disability incurred or aggravated during military service, and employers must make reasonable accommodations for the impairment.

What job position can I return to after military leave of absence?

Unless you are absent because of a disability incurred or aggravated by military service, the position you are reinstated to is based on the length of your military service.

For service of 1 to 90 days:

- You should be reinstated to the job you would have held if you had never left, which might mean to a promoted position, so long as you are qualified for the job or can become qualified after reasonable efforts by your employer, or
- If you cannot become qualified, you should be reinstated to the position you held on the day your military service started.

For service of 91 or more days:

- You should be reinstated to the job you would have held if you had never left or to a position of like seniority, status and pay, so long as you are qualified, or
- If you cannot become qualified, you should be reinstated to the position you held on the day your military service started, or one that nearly approximates that position.

Do I have the right to make up periods of work missed due to drill or military leave of absence?

Not unless your employer chooses to offer you the opportunity; it is not required under USERRA.

Am I protected from being discriminated against by an employer because I'm in the military?

Yes. USERRA provides you with protection against discrimination by an employer in making hiring decisions or in taking adverse employment actions if they relate, even in part, to your military service. This protection also extends to potential witnesses to the employer's discriminatory action.

Does USERRA apply to state military duty or governor call-ups of National Guard members?

No, but most states have their own laws to protect you in these instances, and most of the time they are almost the same as USERRA protections.

Where can I get additional information or assistance?

You should begin with your employer. If you cannot resolve the issues, you should check next with your unit commander. If that doesn't work, contact the National Committee for Employer Support of the Guard and

Reserve (ESGR). This is a private organization that works closely with the Department of Defense to obtain and sustain employer and community support for National Guard and Reserve members who periodically are absent from their civilian jobs to perform military duty. Contacting ESGR is not only your best option for speedy resolution; it protects all your levels of appeal if they are needed.

You can contact ESGR Ombudsmen Services through your local ESGR Committee (http://esgr.com/contacts.asp) or the National ESGR Headquarters (http://esgr.com/ourstaff.asp), or by calling their toll-free number, 800/336-4590, and asking for Ombudsmen Services. Although ESGR is not an enforcement agency and cannot offer legal counsel or legal advice, its ombudsmen are qualified to help, sympathetic to the needs of both the employers and employees, and committed to remaining impartial in their counsel. More than 95 percent of requests for assistance are resolved in this informal process, without requiring referral to the Department of Labor for formal investigation.

The Reserve Officers Association (ROA) is also a useful source of additional information. The membership of ROA consists of current and former commanding officers within the reserve and guard, the majority of whom have served during Operations Desert Shield and Desert Storm. The members and the professional staff of the ROA can provide perspective and advice for those about to be mobilized and deployed. Their Web site – www.roa.org – contains information of value to all ranks of all components.





