



Reserve FTS Information Bulletin

Determination of Exempt Active Duty under USERRA

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SUBJ: DETERMINATION OF EXEMPT ACTIVE DUTY UNDER UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994 (USERRA).

A. Civilian Employment and Reemployment Rights for Service Members, Former Service Members and Applicants of the Uniformed Services, DoDI 1205.12

B. Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. § 4301 et seq.

C. Reserve Policy Manual, COMDTINST M1001.28 (series)

1. In accordance with Reference A, the Secretaries of the Military Departments and the Commandant of the Coast Guard will establish policy, assign responsibilities, and provide procedures for informing Service members and individuals, who apply for uniformed service, of their civilian employment and reemployment rights, benefits, and obligations pursuant Reference B.

2. Reference B provides certain protections for individuals who voluntarily or involuntarily leave their civilian employment to perform military service in the uniformed services. Generally, provisions of Reference B provide protection to anyone absent from a position of civilian employment because of uniformed service if a number of conditions are met, one of which is that the cumulative length of absences from civilian employment does not exceed five years. Additionally, Reference B exempts certain periods of active duty performed by a member of the uniformed services from the five year cumulative service limit.

3. To assist the Coast Guard in meeting its responsibilities detailed Reference A, the following Coast Guard entities shall be responsible for actions to inform current and former reservists with their rights, benefits, and obligations afforded to them under Reference B. Specify the Coast Guard's ability to determine periods of service exempt from USERRA's five-year cumulative limit.

A. The Office of Reserve Affairs, COMDT (CG-131) shall, upon request of the member, former member, or civilian employer of current and former members, determine and certify in writing, periods of service exempt from USERRA's five-year cumulative limit. Established exempt periods must be reviewed and recertified via policy memorandum, at a minimum, every two years.

B. Active Duty Order Issuing Authorities detailed in chapter 3 of Reference C shall ensure all orders issued to reservists indicate exemption under USERRA from the five-year cumulative service limit on uniformed service absence from employment (when applicable). All orders issued to reservists shall specify the statutory or Secretarial authority for those orders when such authority meets one or more of the exemptions from USERRA five-year cumulative service limit. Orders qualifying for exemption should include the exemption status and authority. The specific language for qualifying orders that are exempt shall at a minimum include



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the phrase "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)."

C. Commander Pay and Personnel Center (CG PPC) shall ensure Direct Access order notes are updated to reflect the ability to select this phrase for orders qualifying for exemption under USERRA. 4. USERRA creates the following exceptions to the five-year limit on service in the uniformed Services:

A. Service that is required beyond five years to complete an initial period of obligated service. Some military specialties require an individual to serve more than five years because of the amount of time or expense involved in training. If the employee works in one of those specialties, he or she has reemployment rights when the initial period of obligated service is completed.

B. If the employee was unable to obtain orders releasing him or her from service in the uniformed Services before the expiration of the five-year period, and the inability was not the employee's fault.

C. Service performed to fulfill periodic Guard and Reserve training requirements and includes service performed to fulfill additional training requirements determined and certified by a proper military authority as necessary for the employee's professional development, or to complete skill training or retraining. This includes weekend drills and annual training.

D. Service performed in a uniformed Service if the employee was ordered to or retained on active duty under the following circumstances:

- (1) Involuntary active duty of a military retiree;
- (2) Involuntary active duty in wartime;
- (3) Retention on active duty while in captive status;
- (4) Involuntary active duty during a national emergency;
- (5) Involuntary active duty for an operational mission,

involuntary retention on active duty of a critical person during time of crisis or other specific conditions;

(6) Involuntary active duty by the Coast Guard Reserve for natural or man-made disasters;

E. Service performed in a uniformed Service if the employee was 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.

4. Questions regarding this policy may be addressed to CDR Tom Gwilliam, COMDT (CG-1311) at Thomas.V.Gwilliam@USCG.mil.

5. This policy will be incorporated into the next issuance of Reference (C), which will be released within the next year.

6. Released by RDML A. S. McKinley, Acting Director of Reserve and Military Personnel, sends.

7. Internet release is authorized.

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