



DoD INSTRUCTION 1205.12

CIVILIAN EMPLOYMENT AND REEMPLOYMENT RIGHTS FOR SERVICE MEMBERS, FORMER SERVICE MEMBERS, AND APPLICANTS OF THE MILITARY SERVICES

Originating Component: Office of the Under Secretary of Defense for Personnel and Readiness

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Approved by: Ashish S. Vazirani, Performing the Duties of the Under Secretary of Defense for Personnel and Readiness

Purpose: In accordance with the authority in DoD Directive 5124.02 and pursuant to Chapter 43 of Title 38, United States Code (U.S.C.) (also known and referred to in this issuance as the “Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994,” as amended), this issuance establishes policy, assigns responsibilities, and provides procedural guidance to assist in the implementation of policy for Service members, former Service members, individuals who apply for military service, the Military Services and their respective Reserve Component (RC) pertaining to civilian employment and reemployment rights, benefits, and obligations.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY.

This issuance:

- a. Applies to OSD, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components”).
- b. Does not apply to non-DoD uniformed services, such as the commissioned corps of the National Oceanic and Atmospheric Administration and the commissioned corps of the Public Health Service, or to service in non-DoD organizations covered by USERRA such as the National Disaster Medical System.

1.2. POLICY.

In accordance with USERRA, the DoD will:

- a. Support Service members by taking appropriate actions to inform and assist Service members, former Service members, and applicants for military service of their rights, benefits, and obligations.
- b. Support the employers of Service members by responding to employer inquiries about an employee’s military service, when appropriate.
- c. Provide procedural guidance to assist in execution of policy for Service members, former Service members, individuals who apply for military service, the Military Services and their respective RCs pertaining to civilian employment and reemployment rights, benefits, and obligations.

SECTION 2: RESPONSIBILITIES

2.1. ASSISTANT SECRETARY OF DEFENSE FOR MANPOWER AND RESERVE AFFAIRS (ASD(M&RA)).

Under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), the ASD(M&RA):

- a. Develops policy for USERRA.
- b. Manages and delegates responsibilities to the Deputy Assistant Secretary of Defense for Reserve Integration (DASD(RI)) to oversee and develop policy for the Employer Support of the Guard and Reserve (ESGR).

2.2. DASD(RI).

Under the authority, direction, and control of the ASD(M&RA), the DASD(RI):

- a. Oversees the development of and compliance with policy related to USERRA.
- b. Provides guidance, direction, and oversight of the ESGR, a volunteer-centric activity administered by the DoD in accordance with DoD Instruction 1205.22.
- c. Coordinates with the Director, Department of Defense Human Resources Activity to evaluate and develop recommendations for changes to policy and legislation regarding implementation of USERRA.
- d. Reviews the triennial inspection report conducted for the USD(P&R) by the Inspector General (IG) of each Military Service in accordance with Paragraph 2.5.c.(2) of this issuance.

2.3. DIRECTOR, DEPARTMENT OF DEFENSE HUMAN RESOURCES ACTIVITY.

Under the authority, direction, and control of the USD(P&R), and in addition to the responsibilities in Paragraph 2.4., the Director, Department of Defense Human Resources Activity provides:

- a. Support to the ASD(M&RA) and the DASD(RI), as appropriate, in execution of the duties and responsibilities of this issuance.
- b. Procedural guidance and resources to ESGR.
- c. Consistent with relevant policies and guidance from the DASD(RI), oversight for the operations of the ESGR program in accordance with DoD Instruction 1205.22.

2.4. OSD AND DOD COMPONENT HEADS.

The OSD and DoD Component heads develop and implement procedures, within their respective Components, that are appropriate and pursuant to applicable laws and DoD policy pertaining to providing information to persons entitled to rights, benefits, and obligations afforded by the USERRA.

2.5. SECRETARIES OF THE MILITARY DEPARTMENTS AND THE COMMANDANT OF THE U.S. COAST GUARD.

In addition to the responsibilities in Paragraph 2.4., and in coordination with the ASD(M&RA), as appropriate, the Secretaries of the Military Departments and the Commandant of the U.S. Coast Guard:

- a. Develop implementing policy and ensure compliance with this issuance.
- b. Pursuant to Section 4312(c) of Title 38, U.S.C., and in accordance with Section 4 of this issuance, identify types of military service that qualify for exemption from the USERRA 5-year cumulative limit under the authority of the Secretary of the Military Department concerned or the Commandant of the U.S. Coast Guard.
- c. Ensure:
 - (1) RC orders are written in accordance with Section 4 of this issuance to accurately reflect exemption status for periods of military service.
 - (2) The IG of each Military Service, including its respective RCs, conducts an inspection for compliance with this issuance, following established IG protocols. These IG findings will be submitted triennially to the USD(P&R), with a copy provided to the Inspector General of the Department of Defense, no later than January 31st of the calendar year after the previous inspection date. The first report is due the third calendar year after the effective date of this issuance.
 - (3) Relevant USERRA information is provided to all Service members and civilian employees as determined and provided by the ESGR, in accordance with Paragraph 3.1.b. of this issuance.
 - (4) Initial and USERRA refresher information is provided in accordance with Paragraph 3.1.b. of this issuance.
 - (5) Personnel who are authorized to recommend, take, or approve any employment or reemployment action will complete USERRA training in accordance with Section 4335 of Title 38, U.S.C.
 - (6) Service members are advised of their employment and reemployment rights, benefits, and obligations under USERRA after the Service member has completed a period of active duty

(full-time duty in the military services which includes both the RC and the National Guard) longer than 30 days, but before the Service member is released from active duty.

(7) Applicants for the Military Services are advised that, as employees, they must fulfill certain obligations to achieve eligibility for reemployment rights as specified in the USERRA. At a minimum, advice given will include:

(a) The USERRA reemployment eligibility criteria, in accordance with Section 6 of this issuance.

(b) Information regarding the information and mediation services provided by the ESGR, in accordance with Paragraph 3.1.a. of this issuance.

(8) An office of responsibility is established, and appropriate processes are maintained:

(a) To respond to employer requests for verification of military service, in accordance with Paragraph 3.2.b.(1) of this issuance.

(b) That will assist Service members and their employers with determining the exemption status for periods of military service in question, upon request and in accordance with Paragraph 4.3.b. of this issuance.

SECTION 3: PROCEDURES

3.1. SERVICE MEMBER INFORMATION AND ASSISTANCE.

a. ESGR.

The ESGR:

(1) Is responsible for all matters concerning employer support of the National Guard and RC in accordance with DoD Instruction 1205.22.

(2) Maintains the ESGR website, located at <https://www.esgr.mil/>, to provide resources for Service members and employers to assist in understanding their rights, responsibilities, and obligations in accordance with USERRA, to include all applicable Federal statutes, Federal regulations, and DoD policy.

b. Military Departments and the U.S. Coast Guard.

The Military Departments and the U.S. Coast Guard:

(1) Develop procedures for and ensure compliance with Paragraph 3.1.c. of this issuance.

(2) Inform the personnel specified in this paragraph of their general employment and reemployment rights, benefits, and obligations, as described in the USERRA. Personnel to be informed are employees or prospective employees who:

(a) Apply to become a member in the Active Component (AC), National Guard, or RC of a Military Service; or

(b) Are current members of a Military Service who perform duty on a voluntary or involuntary basis annually.

(3) Designate subject-matter experts to serve as points of contact to assist applicants and current members of the Military Services in matters related to USERRA employment and reemployment rights, benefits, and obligations.

c. RCs.

The RCs:

(1) Provide documentation of timing, frequency, and duration of military service upon request from a Service member, former Service member, or the Service member's civilian employer, of circumstances:

(a) That prevent a Service member from providing advance notification of military service to an employer because of military necessity; or

(b) When advance notification is, or was, otherwise impossible or unreasonable under the circumstances, in accordance with the USERRA.

(2) May provide advance notification of military service to an employer on behalf of a Service member or applicant for military service.

(3) Upon request from Service members, former Service members, and individuals applying for military service, provide documentation to establish the Service member's entitlement to USERRA reemployment rights and benefits. As required by the Service member or applicant concerned, appropriate documentation may include:

(a) The inclusive dates of a Service member's initial period of military service performed on active duty.

(b) Any period of military service during which a Service member was required to serve because the Service member was unable to obtain a release from active duty, through no fault of the Service member.

(c) The cumulative length of all periods of active duty performed.

(d) The statutory authority under which a Service member was ordered to active duty when such military service qualifies for exemption from the USERRA's 5-year cumulative Service limit.

(e) The date that the Service member was last released from:

1. Active duty;
2. Active duty operational support;
3. Initial active duty for training;
4. Active duty for training;
5. Inactive duty training;
6. Annual training; or
7. Full-time National Guard duty.

(f) Characterization of service as it relates to the Service member's entitlement to reemployment benefits, as outlined in Section 4304 of Title 38, U.S.C.

(g) A statement that sufficient documentation does not exist to verify a particular period of military service was performed, when applicable.

(4) Inform RC Service members of the services provided by the ESGR that include employer recognition, USERRA education, and mediation of conflicts that arise between Service members and their civilian employers due to military service.

(5) Establish a USERRA subject-matter expert as a central point of contact at each RC headquarters or RC regional command, and at each National Guard State headquarters to aid:

(a) Members of the National Guard or RC's regarding their rights, benefits, and obligations in accordance with USERRA.

(b) Employers of current Service members and applicants for military service with questions about military service or USERRA information requirements that arise from a member's military service or Service obligation.

3.2. EMPLOYER INFORMATION AND ASSISTANCE.

Employers are a critical partner in the health and readiness of the RCs. Employee absences due to military service may present challenges for some employers. Military Departments will engage with the employers of Service members to promptly address employer inquiries, including requests to adjust periods of military service and requests to verify military service.

a. The Military Departments and the U.S. Coast Guard.

The Military Departments and the U.S. Coast Guard will develop procedures for ensuring compliance with Paragraph 3.2.b. of this issuance.

b. RCs.

The RCs:

(1) Designate an office of responsibility who, upon request, provides verification of military service, regardless of duration, to the employers of Service members, current and former Service members, and individuals applying for military service.

(a) Provide documentation to employers of Service members, current and former Service members, and individuals applying for military service, upon request, pursuant to Sections 552 and 552a of Title 5, U.S.C. Disclosure of information necessary to comply with this paragraph would not constitute a clearly unwarranted invasion of a Service member's personal privacy or be otherwise restricted under the Privacy Act, as is reflected in Paragraph C4.2.2.5.2 of DoD 5400.11-R.

(b) Commanders and appropriate military authorities will provide verification of Military Service duty status and assignments to employers, upon request, regardless of the duration of military service.

(c) On the rare occasion that documentation of military service is requested by an investigator or law enforcement official on behalf of an employer for the expressed intent of proceeding with a law enforcement action, the requestor should be referred to the RC's office of general counsel or other authorized legal advisor's office.

(2) Designate RC representatives at the unit level or higher, as appropriate for the RC, who will respond to employer requests regarding the timing, frequency, and duration of military service. The designated RC representative(s) must:

(a) Have the:

1. Discretion to delay, defer, cancel, or reschedule military service, provided it does not negatively affect military operations.

2. Ability to decide, other than adjusting the period of absence, to accommodate employer requests when it is:

a. In the best interest of the military.

b. Reasonable to do so.

(b) Consider written requests from the employers of National Guard and RC members to adjust the Service member's absences from civilian employment, unless prevented by military necessity or it is otherwise impossible or unreasonable under the circumstances. When RC representatives are not able to accommodate an employer request, their decision and justification should be clearly communicated to the employer.

(3) For the purpose of determining whether adjustments to periods of military service can be made and are appropriate based on an employer's request, the determination is at the commander's or designated RC representative's discretion. Considerations should include:

(a) Whether the military service can reasonably be rescheduled or otherwise re-accomplished.

(b) The availability of other Service members to fulfill the obligation.

(c) The timing, frequency, and duration of the Service member's military service.

(d) Military necessity, as weighed against the impact to the employer.

SECTION 4: EXEMPTIONS FROM THE USERRA'S 5-YEAR LIMIT

4.1. CATEGORIES EXEMPT FROM CUMULATIVE MILITARY SERVICE.

Certain periods of active duty military service are not included when calculating cumulative military service for the purposes of the 5-year limitation on reemployment rights. There are two categories of exempt military service specifically identified in Section 4312(c) of Title 38, U.S.C.:

- a. Military service that is exempt because of the statutory basis for the service performed, referred to as "statutory exemption."
- b. Military service that is exempt because the Secretary concerned has exercised authority to exempt it, is referred to as "secretarial exemption."

4.2. STATUTORY EXEMPTIONS FROM THE USERRA'S 5-YEAR LIMIT.

The statutory basis for periods of military service that are exempt from the 5-year Service limitation, identified by reference to Titles 10, 14, and 32, U.S.C., are listed in Section 4312(c) of Title 38, U.S.C.

4.3. SECRETARIAL EXEMPTIONS FROM THE USERRA'S 5-YEAR LIMIT.

- a. Pursuant to Sections 4312(c)(3) and 4312(c)(4)(D) of Title 38, U.S.C., the Secretary concerned has the authority to determine that certain active duty military service will not be included when calculating the years of cumulative military service for the purposes of applying the 5-year Service limitation for the USERRA reemployment rights.
- b. The Secretary concerned will certify these exemptions in written Service-specific policy memorandums every 2 years. Failure to complete a review within 2 years, however, does not affect the continued validity of a previously certified policy memorandum. Secretarial exemptions are not retroactive to periods of military service prior to the official date of the policy memorandums.
- c. The authority in Paragraphs 4.3.a. and 4.3.b. may be delegated, in writing no lower than an Assistant Secretary of a Military Department or the Director of Reserve, U.S. Coast Guard; further re-delegation is not authorized.

4.4. MILITARY DEPARTMENTS AND THE U.S. COAST GUARD.

To identify, certify, and verify periods of military service that are exempt from the 5-year limitation on USERRA reemployment rights, in accordance with Paragraph 4.3. of this issuance, the Military Departments and the U.S. Coast Guard will:

a. Issue Service-specific policy memorandums at least every 2 years, which designate:

(1) Periods of active duty that involve additional training requirements necessary for the professional development, or for completion of skill training, or retraining of members of the National Guard or RC.

(2) Periods of active duty during which a Service member is ordered to, or retained on, active duty (other than for training), pursuant to any provision of law because of a war or national emergency, declared by the President or Congress.

(3) Periods of active duty performed as determined by the Secretary concerned of a critical mission or requirement of the Military Service. This designation:

(a) Will be used sparingly based on military necessity.

(b) Must not be used as a means to avoid the USERRA's 5-year cumulative Service limit or extend individuals in repeated active duty tours.

(4) The office of primary responsibility to assist Service members and their employers with determining applicable exemption authorities consistent with Section 5 of this issuance. Updated contact information will be maintained on the ESGR website.

b. Maintain a process by which Service members and their employers can obtain a formal determination on the exemption authority applicable to periods of military service for the purposes of calculating the 5-year military Service limitation on the USERRA reemployment rights. Determinations are generally final. In the event additional clarifying information about the period of military service is provided by the Service member or employer, the Military Department concerned may reconsider the prior determination consistent with this issuance and local procedures.

c. Ensure RC orders indicate when the statutory basis for the order to, or retention on, active duty makes the period of military service exempt from the 5-year limitation on USERRA reemployment rights, using the appropriate language from Figure 1.

d. Ensure RC orders indicate when a secretarial policy makes the military service exempt from the 5- year limitation on USERRA reemployment rights, using the appropriate language from Figure 2.

e. Ensure RC orders indicate when no basis exists for an exemption from the 5-year Service limitation on USERRA reemployment rights pursuant to statutory or secretarial authority, using the appropriate language from Figure 3.

Figure 1. Required Statutory-Based 5-Year Exemption Language on RC Orders

Periods of military service performed under these authorities are exempt from the USERRA's 5-year limitation on reemployment rights, in accordance with Section 4312(c) of Title 38, U.S.C. These statements have been coordinated with the Department of Labor to appropriately reflect legal authorities and ensure the exemption status of periods of service are clear in accordance with the provisions of the USERRA. When applicable, the appropriate exemption status statement, as written in this figure, must be included on all RC orders.

Service in the Military Services performed under these authorities, as identified in the USERRA, are exempt from the 5-year limitation on reemployment rights.

Authority: Chapter 13 of Title 10, U.S.C., "Insurrection":

"This period of military service is ordered in accordance with Chapter 13 of Title 10, U.S.C. Therefore, the service is exempt if designated by the Secretary concerned in accordance with the USERRA's 5-year Service limitation (Section 4312(c)(4)(B) of Title 38, U.S.C.)."

Authority: Section 688 of Title 10 U.S.C., "Retired Members Ordered to Active Duty":

"This period of military service is ordered in accordance with Section 688 of Title 10, U.S.C. Therefore, the service is exempt in accordance with the USERRA's 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.)."

Authority: Section 10147 of Title 10, U.S.C., "Ready Reserve: Training Requirements":

"This period of military service is ordered in accordance with Section 10147 of Title 10, U.S.C. Therefore, the service is exempt in accordance with the USERRA's 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.)."

Authority: Section 12301(a) of Title 10, U.S.C., "War or National Emergency":

"This period of military service is ordered in accordance with Section 12301(a) of Title 10, U.S.C. Therefore, the service is exempt in accordance with the USERRA's 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.)."

Authority: Section 12301(g) of Title 10, U.S.C., "Service Member in a Captive Status":

"This period of military service is ordered in accordance with Section 12301(g) of Title 10, U.S.C. Therefore, the service is exempt in accordance with the USERRA's 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.)."

Authority: Section 12302 of Title 10, U.S.C., "Ready Reserve":

"This period of military service is ordered in accordance with Section 12302 of Title 10, U.S.C. Therefore, the service is exempt in accordance with the USERRA's 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.)."

Figure 1. Required Statutory-Based 5-Year Exemption Language on RC Orders, Continued

Authority: Section 12304 of Title 10, U.S.C., “Selected Reserve and Certain Individual Ready Reserve Members; Order to Active Duty Other than During War or National Emergency”:

“This period of military service is ordered in accordance with Section 12304 of Title 10, U.S.C. Therefore, the service is exempt in accordance with the USERRA’s 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.)”

Authority: Section 12304a of Title 10, U.S.C., “Defense Support of Major Disaster or Emergency”:

“This period of military service is ordered in accordance with Section 12304a of Title 10, U.S.C. Therefore, the service is exempt in accordance with the USERRA’s 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.)”

Authority: Section 12304b of Title 10, U.S.C., “Support for Preplanned Missions in Support of the Combatant Commanders”:

“This period of military service is ordered in accordance with Section 12304b of Title 10, U.S.C. Therefore, the service is exempt in accordance with the USERRA’s 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.)”

Authority: Section 12305 of Title 10, U.S.C., “Authority of the President to Suspend Certain Laws Relating to Promotion, Retirement, and Separation”:

“This period of military service is ordered in accordance with Section 12305 of Title 10, U.S.C. Therefore, the service is exempt in accordance with the USERRA’s 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.)”

Authority: Section 12406 of Title 10, U.S.C., “National Guard in Federal Service”:

“This period of military service is ordered in accordance with Section 12406 of Title 10, U.S.C. Therefore, the service is exempt in accordance with the USERRA’s 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.)”

Authority: Section 2127 of Title 14, U.S.C., “Recall to Active Duty During War or National Emergency”:

“This period of military service is ordered in accordance with Section 2127 of Title 14, U.S.C. Therefore, the service is exempt in accordance with the USERRA’s 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.)”

Authority: Section 2128 of Title 14, U.S.C., “Recall to Active Duty with Consent of Officer”:

“This period of military service is ordered in accordance with Section 2128 of Title 14, U.S.C. Therefore, the service is exempt in accordance with the USERRA’s 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.)”

Figure 1. Required Statutory-Based 5-Year Exemption Language on RC Orders, Continued

Authority: Section 2308 of Title 14, U.S.C., “Retired Member Recalled to Active Duty During War or National Emergency”:

“This period of military service is ordered in accordance with Section 2308 of Title 14, U.S.C. Therefore, the service is exempt in accordance with the USERRA’s 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.).”

Authority: Section 2309 of Title 14, U.S.C., “Retired Member Recalled to Active Duty with Consent of Member”:

“This period of military service is ordered in accordance with Section 2309 of Title 14, U.S.C. Therefore, the service is exempt in accordance with the USERRA’s 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.).”

Authority: Section 2314 of Title 14, U.S.C., “Detention Beyond Term of Enlistment”:

“This period of military service is ordered in accordance with Section 2314 of Title 14, U.S.C. Therefore, the service is exempt in accordance with the USERRA’s 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.).”

Authority: Section 3713 of Title 14, U.S.C., “Coast Guard Active Duty for Emergency Augmentation of Regular Forces”:

“This period of military service is ordered in accordance with Section 3713 of Title 14, U.S.C. Therefore, the service is exempt in accordance with the USERRA’s 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.).”

Authority: Section 502(a) of Title 32, U.S.C., “National Guard Required Drills and Field Exercises”:

“This period of military service is ordered in accordance with Section 502(a) of Title 32, U.S.C. Therefore, the service is exempt in accordance with the USERRA’s 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.).”

Authority: Section 503 of Title 32, U.S.C., “National Guard Participation in Field Exercises”:

“This period of military service is ordered in accordance with Section 503 of Title 32, U.S.C. Therefore, the service is exempt in accordance with the USERRA’s 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.).”

Figure 2. Required Secretarial-Based 5-Year Exemption Language on RC Orders

These periods of service are exempt from USERRA’s 5-year limitation on reemployment rights when authorized by the appropriate Secretary concerned in accordance with Section 4312(c) of Title 38, U.S.C. These statements have been coordinated with the Department of Labor to appropriately reflect legal authorities and ensure the exemption status of periods of service are clear in accordance with the provisions of the USERRA. For this reason, these exemption statements cannot be truncated. When applicable, the appropriate exemption statement, as written in this figure, must be included on all RC orders.

Service in the Military Services performed under these authorities, as certified in writing by the Secretary concerned, are exempt from the 5-year limit.

Authority: Required Service, Beyond 5 Years, to Complete an Initial Period of Service:

“This period of military service is ordered under [insert authority] and is required beyond 5 years, to complete an initial period of obligated service. Therefore, the service is exempt in accordance with the USERRA’s 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.)”

Authority: Fulfill Additional Training Requirements Determined by the Secretary concerned:

“This period of military service is ordered under [insert authority] and fulfills additional training requirements determined and certified in writing by the Secretary concerned, to be necessary for professional development, or completion of skill training or retraining. Therefore, the service is exempt in accordance with the USERRA’s 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.)”

Authority: Active Duty in Support of an Operational Mission, as Determined by the Secretary concerned:

“This period of military service is ordered under [insert authority] and the member is ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty in accordance with Section 12304 of Title 10, U.S.C. Therefore, the service is exempt in accordance with the USERRA’s 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.)”

Authority: War or National Emergency Declared by President or the Congress:

“This period of military service is ordered under [insert authority] and the member is ordered to or retained on active duty (other than for training) in accordance with any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned. Therefore, the service is exempt in accordance with the USERRA’s 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.)”

Figure 2. Required Secretarial-Based 5-Year Exemption Language on RC Orders, Continued

Authority: Support of a Critical Mission or Requirement, as Determined by the Secretary concerned:
“This period of military service is ordered under [insert authority] duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the military services. Therefore, the service is exempt in accordance with the USERRA’s 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.)”

Authority: Full-Time National Guard Duty in Response to a National Emergency Declared by the President and Supported by Federal Funds, as Determined by the Secretary concerned:
“This period of military service is ordered in accordance with Section 502(f)(2)(A) of Title 32, U.S.C., full-time National Guard duty (other than for training), as authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds, as determined by the Secretary concerned. Therefore, the service is exempt in accordance with the USERRA’s 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.)”

Figure 3. Required Non-Exempt Language on RC Orders

Military service performed under any authority not otherwise listed in Figures 1 or 2 is not exempt from USERRA’s 5-year cumulative limit, and orders will contain this language:
“This period of military service is ordered under [insert authority]. Therefore, the service is nonexempt in accordance with the USERRA’s 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.)”

4.5. RC ORDER WRITING REQUIREMENTS.

RC orders must accurately indicate whether the period of military service qualifies for exemption from the USERRA’s 5-year cumulative limit in accordance with the USERRA, the exemption policy memorandum of the Secretary concerned, and this issuance. Orders will span the entire period of military service when ordering a member of the National Guard or RC to active duty for a mission or requirement.

a. All RC orders must be written to include the:

- (1) Inclusive dates of military service.
- (2) Authority under which the period of service is performed.
- (3) Appropriate exemption statement, as provided in Figures 1 and 2, if the period of military service is exempt from the USERRA’s 5-year limit.

(4) Appropriate exemption statement, as provided in Figure 3, if the period of military service is not exempt from the USERRA's 5-year Service limit.

(5) Contact information for a designated unit or RC representative who will respond to employer inquiries about the period of military service.

b. RC orders must be written, as required following Military Department and Military Service policies and procedures, to ensure the exemption status and exemption authority for the period of military service is accurately reflected.

c. An official statement of military service memorandum will be generated as an alternative to amend a Service member's order, upon request from a Service member or their employer, that indicates whether the original order(s) were exempt or not exempt from the USERRA's 5-year cumulative limit under the specified authority. The statement of military service memorandum should be retained in the Service member's personnel file and will be provided to the Service member and employer. See Appendix 4A for a sample statement of military service memorandum.

APPENDIX 4A: SAMPLE STATEMENT OF SERVICE MEMORANDUM

Upon request from a Service member or employer, a statement of military service memorandum identifying the exemption status of the period(s) of military service in question will be generated. The statement of military service memorandum should be retained in the Service member's personnel file and will be provided to the Service member and employer.

Figure 4. Sample Statement of Service Memorandum

<p style="text-align: center;">OFFICIAL LETTERHEAD</p> <p>MEMORANDUM FOR (Name of Service member) FROM: (Designated Office of Responsibility) SUBJECT: Statement of Service for Purposes of Calculating USERRA 5-Year Limitation on Reemployment Rights</p> <p>Based on the information provided to this office, this statement of service has been made for the purpose of determining exemption authority in accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA) for the period(s) of service in the Military Services in this memorandum. Determinations regarding the authority for the period(s) of service made by this office for the purpose of USERRA exemption status are final, as of [INSERT DATE], unless additional, clarifying information can be provided.</p> <p>These periods of service were performed in accordance with statutory authority set forth [<u>in this memorandum or attached</u>], and therefore are exempt from USERRA's 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.):</p> <p>(At a minimum, list start and end dates of period(s) of service covered and the statutory or Secretarial authority under which the military service was performed. List here or attach to this memorandum.)</p> <p>These periods of service were <u>not</u> performed in accordance with statutory or Secretary concerned exemptions in Section 4312(c) of Title 38, U.S.C., and, therefore, are <u>not</u> exempt from USERRA's 5-year Service limitation (Section 4312(c) of Title 38, U.S.C.):</p> <p>(At a minimum, list start and end dates of period(s) of service provided for consideration and the authority under which the military service was performed. List here or attach to this memorandum.)</p> <p style="text-align: center;">Signed on behalf of (Appropriate Assistant Secretary or Coast Guard Director)</p>

SECTION 5: EXEMPTION STATUS ADJUDICATION POINTS OF CONTACT

a. The points of contact in Table 1 are responsible for determining the appropriate authority for periods of military service for the purpose of determining exemption status in accordance with the USERRA's 5- year Service limitation. Determinations will be made, upon request from Service members or their employers.

b. The offices of responsibility will ensure due diligence in contacting the Service member or appropriate RC entity as required to make a determination. Determinations made by the designated office of responsibility regarding the statutory authority of the Secretary concerned for a period of military service are final, unless additional, clarifying information regarding the period of military service is provided by the Service member or employer.

c. Points of contact information and any updates will be maintained and available on the ESGR Website.

Table 1. Points of Contact

Department Component	Mailing Address	E-mail	Telephone
U.S. Army	OASA(M&RA), Attn: Deputy Assistant Secretary of the Army (Military Personnel and Quality of Life), 111 Army Pentagon Washington, D.C. 20310-0111		
U.S. Army National Guard	Army National Guard G1 (ARNG-HRH) ATTN: AGR Policy Branch 111 S. George Mason Drive Arlington, VA 22204-1382	ng.ncr.ngb-arng.mbx.us-userra@mail.mil	703-604-8496
U.S. Army Reserve	Office of the Chief of Army Reserve, Private Public Partnership Office 6075 Goethals Road, Building 1908 Fort Belvoir, VA 22060	usarmy.usarc.ocar.mbx.p3@mail.mil	703-806-7597
U.S. Navy and U.S. Marine Corps	ASN(M&RA) 1000 Navy Pentagon Washington, D.C. 20350-1000		
U.S. Marine Corps Forces Reserve	Commander, Marine Corps Forces Reserve 2000 Opelousas Avenue New Orleans, LA 70114		504-697-7181
U.S. Navy Reserve Force	Commander, Navy Reserve Force (N00P) 1915 Forrestal Drive Norfolk VA 23551-1615		
U.S. Air Force	SAF/MR 1660 Air Force Pentagon Washington, DC 20330-1660		

Table 1. Points of Contact, Continued

Department Component	Mailing Address	E-mail	Telephone
U.S. Air National Guard	NGB/A1PS 3500 Fetchet Avenue Joint Base Andrews, MD 20762-5157	usaf.jbanafw.ngb-al.mbx.a1ps@mail.mil	240-612-8281
Air Force Reserve	HQ AF/REP 1050 Air Force Pentagon Washington, D.C. 22202	usaf.pentagon.af-re-workflow@mail.mil	703-614-0728
U.S. Coast Guard	Coast Guard Personnel Service Center (CG-PSC-RPM) 2703 Martin Luther King Jr Ave Stop 7200 Washington DC 20593-7200	arl-pf-cgpsc-rpm-1-status@uscg.mil	

SECTION 6: SERVICE MEMBERS

To be eligible for USERRA reemployment protections following an absence from an employer due to military service, a Service member must meet the minimum criteria as outlined in this section.

a. Advance Notice of Service in Military Service.

The Service member must provide the employer advance notice of absence due to service in a Military Service, except when giving such notice is prevented by military necessity, or otherwise impossible or unreasonable under the circumstances.

(1) Although oral notice is allowed in accordance with the USERRA, written notice of pending military service provides documentary evidence and avoids unnecessary disputes.

(2) Regardless of the means of providing advance notice, whether oral or written, it should be provided as early as possible. Advance notice to employers should be provided at least 30 days before departure for military service, when feasible.

(3) Advance notice may be informal and need not follow any format. Some acceptable methods of notification include providing the employer:

(a) Advance notice from an appropriate officer in the Service member's chain of command on behalf of the employee; written notice is preferred.

(b) A copy of the unit's annual training schedule for the duty scheduled; or

(c) A signed standardized letter with blanks, in which the Service member has filled in the appropriate military duty dates in advance of the military service.

(4) Sample advance notice letters may be obtained from the ESGR Website.

(5) Employers may contact a Service member's commander or other appropriate military authority and obtain verification of military service, regardless of the duration of the military service absence which serves as the basis for the employee's absence.

b. Reapply or Return to Employment within USERRA Established Timelines.

(1) A Service member must notify the pre-service employer of their intent to return to the employment position by either reporting to work or submitting a timely application for reemployment. Depending on the length of military service, employees may be required to submit an application, and the timeline for doing so depends upon the length of the military service, pursuant to Section 4312(e) (1) of Title 38, U.S.C. and Subpart 1002.115 of Title 20, Code of Federal Regulations (CFR).

(2) When the period of military service exceeds 30 days, the Service member is required to provide documentation of the military service performed, when requested by the employer.

Subpart 1002.123 of Title 20, CFR details the types of documentation that satisfy this requirement.

(3) Sample return to employment notification letters may be obtained from the ESGR Website.

(4) Pursuant to Subpart 1002.88 of Title 20, CFR, a Service member is not required to provide notice of intent to seek reemployment prior to beginning a period of military service.

c. Military Service Absence Does Not Exceed 5 Cumulative Years.

(1) USERRA does not provide reemployment protection for absences from an employer due to military service greater than 5 cumulative years. For purposes of calculating the 5-year cumulative limit, certain military service is exempt pursuant to Sections 4312(c) (3) and 4312(c) (4) of Title 38, U.S.C.

(a) Military service performed pursuant to specified statutory authorities is exempt in accordance with USERRA, as documented on the Service member's orders.

(b) Military service which has been exempted by the Secretary concerned in a written determination or memorandum is exempt in accordance with USERRA.

(2) Service members and employers with questions regarding the exemption status of a period of military service should contact the appropriate office of responsibility as listed in Table 1. Points of contact information for these offices of responsibility is also maintained on the ESGR Website.

d. Service Does Not Include a Disqualifying Discharge.

The Service categories listed in this paragraph will disqualify a Service member from reemployment protections in accordance with USERRA.

(1) Separated from the Military Service concerned:

(a) With a dishonorable or bad conduct discharge.

(b) Under other than honorable conditions, as characterized by regulations of the Military Department or Military Service concerned.

(2) A commissioned officer:

(a) Dismissed, as permitted pursuant to Section 1161(a) of Title 10, U.S.C.:

1. By sentence of a general court-martial;

2. In commutation of a sentence of a general court-martial; or

3. In time of war, by order of the President.

(b) Dropped from the rolls, in accordance with Section 1161(b) of Title 10, U.S.C.,
due to:

1. Absence without authority for at least 3 months;
2. Separation by reason of a sentence to confinement adjudged by a court-martial;

or

3. A final sentence to confinement in a Federal or State penitentiary or
correctional institution.

e. Other Service Member Reemployment Protections.

(1) Service members may file a complaint with the Department of Labor-Veterans Employment and Training Service (DOL-VETS) to allege that an employer, including any federal executive agency or the Office of Personnel Management, has failed or refused, or is about to fail or refuse, to comply with employment or reemployment rights and benefits in accordance with USERRA.

(a) Use of ESGR mediation services is not a prerequisite to file a complaint with the DOL-VETS.

(b) The DOL-VETS investigates these complaints and, if the evidence supports a conclusion that a claimant's USERRA rights have been violated, will work with the employer and the employee to obtain an appropriate resolution.

(c) Regardless of this outcome, Service members may request that their case be referred to the Department of Justice or, in cases involving Federal employers, to the Office of Special Counsel for further review and consideration of representation in U.S. District Court or before the Merit Systems Protections Board pursuant to Chapter 12 of Title 5, U.S.C.

(2) Service members retain the right to pursue a private right of action in a court of competent jurisdiction or in cases involving Federal employers, to file an appeal before the Merit Systems Protections Board.

(a) ESGR and DOL-VETS provide their services at no cost to the Service member.

(b) Service members may hire a private attorney at their own expense.

GLOSSARY

G.1. ACRONYMS.

ACRONYM	MEANING
ASD(M&RA)	Assistant Secretary of Defense for Manpower and Reserve Affairs
CFR	Code of Federal Regulations
DASD(RI)	Deputy Assistant Secretary of Defense for Reserve Integration
DOL-VETS	Department of Labor Veterans' Employment and Training Service
DSSC	Defense Support Services Center
ESGR	Employer Support of the Guard and Reserve
IG	inspector general
RC	Reserve Component
U.S.C.	United States Code
USD(P&R)	Under Secretary of Defense for Personnel and Readiness
USERRA	Uniformed Services Employment and Reemployment Rights Act

G.2. DEFINITIONS.

Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

TERM	DEFINITION
active duty	Full-time duty in the military services which includes both the RC and the National Guard.
critical mission	An operational mission that requires the skills or resources available in an RC or its Components.
critical requirement	A requirement in which the incumbent possesses unique knowledge, extensive experience, and specialty skill training to successfully fulfill the duties or responsibilities in support of the mission and operation or exercise. Also, a requirement in which the incumbent must gain the necessary experience to qualify for key senior leadership positions within their RC.
employee	Defined in Section 4303 of Title 38, U.S.C.

TERM	DEFINITION
employer	Defined in Section 4303 of Title 38, U.S.C.
military necessity	For determining when providing advance notice of military service is not required, a mission, operation, exercise, or requirement that is classified, or a pending or ongoing mission, operation, exercise, or requirement that may be compromised or otherwise adversely affected by public knowledge is sufficient justification for not providing advance notice to an employer.
military service	For purposes of this instruction means in the case of a Service member who is a member of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard.
officer	For determining those Service officials authorized to provide advance notice to an employer of pending military service by a Service member or an individual who has applied for military service, an officer will include all commissioned officers, warrant officers, and non-commissioned officers authorized by the Secretary concerned to act in this capacity.
ombudsmen	ESGR volunteers located throughout the United States and its territories who are available to assist members of the of the RC in resolving disputes with their civilian employers related to their military service through neutral and impartial mediation.
RC	Defined in Section 10101 of Title 10, U.S.C.
Service members	DoD military personnel of the Air Force, Air National Guard, Air Force Reserve, Army, Army National Guard, Army Reserve, Navy, Navy Reserve, Marine Corps, Marine Corps Reserve, Space Force, Coast Guard, and Coast Guard Reserve.
verification of service	A confirmation that the Service member did or did not perform military service on the dates in question. Includes confirmation of current or previous military status, dates of release from active duty, retirement dates, discharge status, and authentication of military documents.

REFERENCES

Code of Federal Regulations, Title 20

DoD 5400.11-R, "Department of Defense Privacy Program," May 14, 2007

DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))," June 23, 2008

DoD Instruction 1205.22, "Employer Support of the Guard and Reserve (ESGR)," February 6, 2017, as amended

Employer Support of the Guard and Reserve Website, <https://www.esgr.mil>

United States Code Title 5

United States Code, Title 10

United States Code, Title 14

United States Code, Title 32

United States Code, Title 38