



THE SECRETARY OF THE NAVY
WASHINGTON DC 20350-1000

December 11, 2018

MEMORANDUM FOR CHIEF OF NAVAL OPERATIONS
COMMANDANT OF THE MARINE CORPS

SUBJECT: Reemployment Protections for Navy and Marine Corps Military Personnel

- References:
- (a) Memorandum for Chief of Naval Operations and Commandant of the Marine Corps, REEMPLOYMENT PROTECTIONS FOR PERSONNEL ACTIVATED OR RETAINED IN SUPPORT OF THE NATIONAL EMERGENCY dated 11 Mar 2002
 - (b) 38 U.S.C. Chapter 43, Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)
 - (c) Department of Defense Instruction 1205.12
 - (d) Memorandum for Assistant Secretary of the Navy (Manpower and Reserve Affairs), REQUIRED UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT VERBIAGE ON QUALIFYING RESERVE COMPONENT ORDERS dated 21 Jun 2018

This Memorandum supersedes reference (a). Reserve Service Members who are absent from their civilian employment due to uniformed service retain their re-employment rights if they meet the requirements of reference (b). One of these requirements is that the cumulative length of the member's absences from civilian employment does not exceed five years. Reference (b) exempts certain periods of active duty from this five-year limit. References (b) and (c) provide authority for the Secretary of the Navy to designate additional periods of service as exempt from the five-year period.

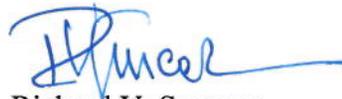
The following exemptions are categorically approved:

- Entry level training. The Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)) may maintain a list of any additional training requirements that are certified as exempt from the USERRA 5-year cumulative service limit. All training requirements certified by the Secretary shall be necessary for professional development or for completion of skill training or retraining.
- Periods of service performed by a Navy or Marine Corps Reserve member ordered to or retained on active duty (other than for training) under Presidential Proclamation 7463 of September 14, 2001 and successive Declarations of National Emergency signed by the President.
- Periods of service performed by a Navy or Marine Corps Reserve member ordered to or retained on active duty (other than for training) when such period of service is mission critical and/or fulfills a critical requirement, as determined by the ASN (M&RA). The

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ASN (M&RA) may maintain a list of all mission critical service and critical requirements that are certified as exempt from the USERRA 5-year cumulative service limit.

- Activation orders for personnel must include a statement reflecting the exemption status from the 5-year cumulative service limit, as well as the statutory or Secretarial authority under which the orders were issued, in accordance with reference (d). Attachment (1) contains language approved by the Department of Labor for use in all activation orders. For periods of service where exemption applicability is unclear, questions, or appeals for exemption may be submitted to the ASN (M&RA) for adjudication. Ensure all personnel are advised regarding their rights, benefits, and responsibilities with respect to civilian employment as provided by USERRA.



Richard V. Spencer

Attachment:
As stated

Periods of uniformed service performed under the following authorities are exempt from the five-year service limitation of the Uniformed Services Employment and Reemployment Rights Act (USERRA) found in 38 U.S.C. § 4312(c). The language below has been approved by the Department of Labor and shall be inserted into Service Members' orders to ensure that the authority and exemption status of a period of service is clear under the provisions of USERRA.

Exemptions Authorized by 38 U.S.C. § 4312(c):

Authority: 10 U.S.C. § 12301(a) – Full Mobilization (Congressional Declaration of National Emergency)

This period of uniformed service is ordered under 10 U.S.C. § 12301(a). Therefore, the service is exempt under USERRA's five-year service limitation (38 U.S.C. § 4312(c)).

Authority: 10 U.S.C. § 12301(g) – Service Member in a Captive Status

This period of uniformed service is ordered under 10 U.S.C. § 12301(g). Therefore, the service is exempt under USERRA's five-year service limitation (38 U.S.C. § 4312(c)).

Authority: 10 U.S.C. § 12302 – Partial Mobilization (Presidential Declaration of National Emergency)

This period of uniformed service is ordered under 10 U.S.C. § 12302. Therefore, the service is exempt under USERRA's five-year service limitation (38 U.S.C. § 4312(c)).

Authority: 10 U.S.C. § 12304 – Presidential Reserve Call Up

This period of uniformed service is ordered under 10 U.S.C. § 12304. Therefore, the service is exempt under USERRA's five-year service limitation (38 U.S.C. § 4312(c)).

Authority: 10 U.S.C. § 12304a – Defense Support of Civil Authorities

This period of uniformed service is ordered under 10 U.S.C. § 12304a. Therefore, the service is exempt under USERRA's five-year service limitation (38 U.S.C. § 4312(c)).

Authority: 10 U.S.C. § 12304b – Support for Preplanned Missions in Support of the Combatant Commanders

This period of uniformed service is ordered under 10 U.S.C. § 12304b. Therefore, the service is exempt under USERRA's five-year service limitation (38 U.S.C. § 4312(c)).

Authority: 10 U.S.C. § 12305 – Authority of the President to Suspend Certain Laws Relating to Promotion, Retirement, and Separation

This period of uniformed service is ordered under 10 U.S.C. § 12305. Therefore, the service is exempt under USERRA's five-year service limitation (38 U.S.C. § 4312(c)).

Authority: Initial Training Exceeding Five Years in Duration

This period of uniformed service is ordered under (insert authority), and is required, beyond five years, to complete an initial period of obligated service. Therefore, the service is exempt under USERRA's five-year service limitation (38 U.S.C. § 4312(c)).

Authority: 10 U.S.C. § 688 – Retired Members Ordered to Active Duty

This period of uniformed service is ordered under 10 U.S.C. § 688. Therefore, the service is exempt under USERRA's five-year service limitation (38 U.S.C. § 4312(c)).

Exemptions Authorized by the Secretary of the Navy in Accordance with this Memorandum:

The following authorities for exempting periods of military service from the 5-year cumulative service limit may only be used when the underlying basis for service has been exempted by the appropriate authority in accordance with this Memorandum:

Authority: 10 U.S.C. § 12301(d) – Voluntary Activation for Training Requirements Certified by the Secretary of the Navy as Necessary for Professional Development or Skill Training or Retraining

This period of uniformed service is ordered under 10 U.S.C. § 12301(d). In accordance with 38 U.S.C. Chapter 43, as implemented by the Secretary of the Navy in the MEMORANDUM titled REEMPLOYMENT PROTECTIONS FOR NAVY AND MARINE CORPS MILITARY PERSONNEL, this period of service fulfills additional training requirements determined and certified in writing by the Secretary concerned, to be necessary for professional development, or for completion of skill training or retraining. Therefore, the service is exempt under USERRA's five-year service limitation (38 U.S.C. § 4312(c)).

Authority: Active Duty Under a Provision of Law Because of a War or National Emergency Declared by the President or the Congress, as Determined by the Secretary

This period of uniformed service is ordered under (insert authority). In accordance with 38 U.S.C. Chapter 43, as implemented by the Secretary of the Navy in the MEMORANDUM titled REEMPLOYMENT PROTECTIONS FOR NAVY AND MARINE CORPS MILITARY PERSONNEL, this period of service orders or retains the member 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. Therefore, the service is exempt under USERRA's five-year service limitation (38 U.S.C. § 4312(c)).

Authority: Voluntary Activation for Critical Mission or Requirement of the Uniformed Services

This period of uniformed service is ordered under (insert authority). In accordance with 38 U.S.C. Chapter 43, as implemented by the Secretary of the Navy in the MEMORANDUM titled REEMPLOYMENT PROTECTIONS FOR NAVY AND MARINE CORPS MILITARY PERSONNEL, the member is ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services. Therefore, the service is exempt under USERRA's five-year service limitation (38 U.S.C. § 4312(c)).

Other Authorities:

Authorities that are not listed above should contain the following language:

This period of uniformed service is ordered under (insert authority). Therefore, the service is nonexempt under USERRA's five-year service limitation (38 U.S.C. 4312(c)).

Questions regarding whether a period of service is exempt should be submitted through the service chain of command to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) for adjudication.