

U.S. Department of  
Homeland Security

United States  
Coast Guard



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OCT 28 2021

## MEMORANDUM

From: J. M. Kelly, RADM  
CG-R

*JM Kelly* 28 October 2021

To: CG-R5  
CG-1  
CG-133  
CG-PSC

Subj: CIVILIAN REEMPLOYMENT OF COAST GUARD MILITARY PERSONNEL

Ref: (a) Civilian Employment and Reemployment Rights of Applicants for Service Members, Former Service Members and Applicants of the Uniformed Services, DODI 1205.12, May 20, 2016  
(b) Deputy Assistant Secretary of Defense (Reserve Integration) Memorandum of May 30, 2018

1. In accordance with references (a) and (b) this memorandum clarifies current policy regarding service members' rights under the Uniformed Services Employment and Reemployment Rights ACT (USERRA), Title 38, United States Code (U.S.C.), Chapter 43. USERRA provisions 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 absence from civilian employment due to periods of uniformed service does not exceed five years. In addition, USERRA exempts certain periods of active duty performed by members of the uniformed services from the five-year cumulative service limit.

2. The following types of service are statutorily exempt from the USERRA five-year cumulative service limit:

a. Periods of service performed by Coast Guard Reserve Component (RC) members ordered to or retained on active duty under the following authorities: 10 U.S.C § 688, 10 U.S.C § 12301(a), 10 U.S.C § 12301(g), 10 U.S.C § 12302, 10 U.S.C § 12304, 10 U.S.C § 12305, 14 U.S.C § 2127, 14 U.S.C § 2128, 14 U.S.C § 2308, 14 U.S.C § 2309, 14 U.S.C § 2314, and 14 U.S.C § 3713.

b. Service performed to fulfill periodic Coast Guard Reserve training requirements as prescribed by 10 U.S.C § 10147, i.e., Active Duty for Training – Annual Training (ADT-AT) and Inactive Duty for Training (IDT).

3. Additionally, USERRA provides authority for the Commandant of the Coast Guard to designate certain other periods of service as exempt from the five-year limit. This memorandum

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addresses specifically designated exemptions given under my authority, acting on behalf of the Commandant of the Coast Guard.

4. The following types of service are exempt by Secretarial authority from the USERRA five-year cumulative limit:

a. Periods of service performed by RC members ordered to or retained on active duty under 10 U.S.C. § 12301(d) on or after September 14, 2001, for the purpose of providing direct or indirect support to missions or operations associated with the National Emergency by Reason of Certain Terrorist Attacks declared by Presidential Proclamation 7463 dated September 14, 2001, and successive continuations. The basis for the order must be linked to the national emergency as declared by the proclamation. Indirect support must be in positions whose majority of duties performed support, but may not necessarily be physically located within, the associated missions or operations.

b. Periods of service performed by RC members ordered to or retained on active duty under 10 U.S.C. § 12301(d) on or after February 15, 2019, through January 20, 2021, for the purpose of providing direct support to missions or operations associated with the southern border as declared by Presidential Proclamation 9844 dated February 15, 2019, and rescinded by Presidential Proclamation 10142 dated January 20, 2021. The basis for the order must be linked directly to the national emergency as declared in the proclamation.

c. Periods of service performed by RC members ordered to or retained on active duty under 10 U.S.C. § 12301(d) on or after March 27, 2020, for the purpose of providing direct or indirect support to missions or operations associated with the national emergency resulting from the COVID-19 pandemic as declared by Presidential Proclamation 9994 dated March 27, 2020, and successive continuations. The basis of the order must be linked to the COVID-19 pandemic. Indirect support must be in positions whose majority of duties performed support, but may not necessarily be physically located within, the associated missions or operations.

d. Periods of service performed by RC members ordered to or retained on active duty under 10 U.S.C. § 12301(d) subsequent to reaching statutory limits on 14 U.S.C. § 3713 orders for the purpose of providing direct or indirect support to missions or operations associated with a domestic manmade or natural disaster. The basis for the order must be linked to the declared domestic emergency. Indirect support must be in positions whose majority of duties performed support, but may not necessarily be physically located within, the associated disaster area.

e. Periods of service performed by RC members ordered to or retained on active duty under 10 U.S.C. § 12301(h) to receive authorized medical treatment for or recovering from an injury, illness, or disease incurred or aggravated in the line of duty while serving on contingency orders identified in preceding paragraphs for a period of more than 30 days.

f. Periods of service performed by RC members for initial active duty training (IADT) and "A" school. This exemption is specifically based on the authority of 38 U.S.C. § 4312(c)(3) which exempts the service of a member who is performing duty "necessary for professional development."

5. Service members and employers with questions regarding exemption status for a given period of service should route inquiries to the Coast Guard Personnel Service Center (CG-PSC-RPM). CG-PSC-RPM will review the request and provide a determination whether the subject

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orders(s) is exempt.

6. Periods of service that qualify for an exemption from enclosure (1) should be noted on service member's orders stating the period of service is exempt under USERRA five-year limit, 38 U.S.C. § 4312. If this statement should have been but was not included in qualifying activation orders, the statement must be included in a separate document and retained in the service member's personnel file.

7. Commanders must remain vigilant to potential hardships to employers when approving short notice orders for military duty. Employers understand their obligations, but also have the right under USERRA to voice their concerns over the timing, frequency, and duration of uniformed service to an appropriate military authority. I ask each commander to consider the impact to the employer and whether the training must be accomplished during peak work cycles within various industries and employment sectors, and adjust schedules if it is possible and reasonable to do so, or clearly communicate why it is not. Finally, I ask Coast Guard leaders at all levels to continue to maintain the balance between mission, civilian employment, and family for each reservist in order to better sustain a healthy, operationally ready, Reserve force.

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Enclosure: (1) Department of Labor (DOL) Coordinated Required Exemption Verbiage



DOL Coordinated Required Exemption Verbiage

A	B	C	D	E
	Always include this language:	Always fill in with authority	Additional authority. Use if appropriate. [If service is already per se exempt as indicated in red on column C not necessary to use in order to be able to include the statement that the service is exempt.]	Exemption statement. If red text from columns C or D is used then use the below sentence with the word "exempt." If no red text applies use "nonexempt" in the sentence below.
	"This period of uniformed service is ordered under"			Therefore, the service is exempt/nonexempt under USERRA's five-year service limitation (38 USC 4312(c)).
PLE:	This period of uniformed service is ordered under	10 USC § 12301(d)		Therefore, the service is <u>nonexempt</u> under USERRA's five-year service limitation (38 USC 4312(c)).
PLE:	This period of uniformed service is ordered under	10 USC § 12301(d)	and the member is 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.	Therefore, the service is <u>exempt</u> under USERRA's five-year service limitation (38 USC 4312(c)).
PLE:	This period of uniformed service is ordered under	10 USC § 12301(b)		Therefore, the service is <u>exempt</u> under USERRA's five-year service limitation (38 USC 4312(c)).
PLE:	This period of uniformed service is ordered under	14 USC § 359		Therefore, the service is <u>exempt</u> under USERRA's five-year service limitation (38 USC 4312(c)).
PLE:	This period of uniformed service is ordered under	32 USC § 504	and is required, beyond five years, to complete an initial period of obligated service.	Therefore, the service is <u>exempt</u> under USERRA's five-year service limitation (38 USC 4312(c)).
PLE:	This period of uniformed service is ordered under	32 USC § 504		Therefore, the service is <u>nonexempt</u> under USERRA's five-year service limitation (38 USC 4312(c)).
	This period of uniformed service is ordered under	(fill in statutory authority)	and is required, beyond five years, to complete an initial period of obligated service	Therefore, the service is <u>exempt</u> under USERRA's five-year service limitation (38 USC 4312(c)).
	This period of uniformed service is ordered under	(fill in statutory authority)	and 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 <u>exempt</u> under USERRA's five-year service limitation (38 USC 4312(c)).
	This period of uniformed service is ordered under	(fill in statutory authority)	and the member is 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.	Therefore, the service is <u>exempt</u> under USERRA's five-year service limitation (38 USC 4312(c)).

**DOL Coordinated Required Exemption Verbiage**

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	Always include this language:	Always fill in with authority	Additional authority. Use if appropriate. If service is already per se exempt as indicated in red on column C not necessary to use in order to be able to include the statement that the service is exempt./	Exemption statement. If red text from columns C or D is used then use the below sentence with the word "exempt." If no red text applies use "nonexempt" in the sentence below.
	"This period of uniformed service is ordered under"			Therefore, the service is exempt/nonexempt under USERRA's five-year service limitation (38 USC 4312(c)).
	This period of uniformed service is ordered under	(fill in statutory 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 under section 12304 of title 10.	Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).
	This period of uniformed service is ordered under	(fill in statutory authority)	and 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 USC 4312(c)).
	This period of uniformed service is ordered under	(fill in statutory authority)	and the member is ordered to full-time National Guard duty (other than for training) under section 502(f)(2)(A) of title 32 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 under USERRA's five-year service limitation (38 USC 4312(c)).
	This period of uniformed service is ordered under	32 USC § 503	-----	Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).
	This period of uniformed service is ordered under	32 USC § 502(a)	-----	Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).
	This period of uniformed service is ordered under	10 USC chapter 15	-----	Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).
	This period of uniformed service is ordered under	10 USC § 688	-----	Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).
	This period of uniformed service is ordered under	10 USC § 10147	-----	Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).
	This period of uniformed service is ordered under	10 USC § 12301(a)	-----	Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).
	This period of uniformed service is ordered under	10 USC § 12301(g)	-----	Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).
	This period of uniformed service is ordered under	10 USC § 12302	-----	Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).
	This period of uniformed service is ordered under	10 USC § 12304	-----	Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).
	This period of uniformed service is ordered under	10 USC § 12304a	-----	Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).
	This period of uniformed service is ordered under	10 USC § 12304b	-----	Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).
	This period of uniformed service is ordered under	10 USC § 12305	-----	Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).
	This period of uniformed service is ordered under	10 USC § 12406	-----	Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).
	This period of uniformed service is ordered under	14 USC § 331	-----	Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).
	This period of uniformed service is ordered under	14 USC § 332	-----	Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).
	This period of uniformed service is ordered under	14 USC § 359	-----	Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).
	This period of uniformed service is ordered under	14 USC § 360	-----	Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).

**DOL Coordinated Required Exemption Verbiage**

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	<p>Always include this language:</p>	<p>Always fill in with authority</p>	<p>Additional authority. Use if appropriate. If service is already per se exempt as indicated in red on column C not necessary to use in order to be able to include the statement that the service is exempt.)</p>	<p>Exemption statement. If red text from columns C or D is used then use the below sentence with the word "exempt." If no red text applies use "nonexempt" in the sentence below.</p>
	<p>"This period of uniformed service is ordered under"</p>			<p>Therefore, the service is exempt/nonexempt under USERRA's five-year service limitation (38 USC 4312(c))</p>
	<p>This period of uniformed service is ordered under</p>	<p>14 USC § 367</p>	<p>.....</p>	<p>Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).</p>
	<p>This period of uniformed service is ordered under</p>	<p>14 USC § 712</p>	<p>.....</p>	<p>Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).</p>
<p>PLE:</p>	<p>This period of uniformed service is ordered under</p>	<p>32 USC § 504</p>	<p>.....</p>	<p>Therefore, the service is nonexempt under USERRA's five-year service limitation (38 USC 4312(c)).</p>
<p>PLE:</p>	<p>This period of uniformed service is ordered under</p>	<p>10 USC § 12301(d)</p>	<p>.....</p>	<p>Therefore, the service is nonexempt under USERRA's five-year service limitation (38 USC 4312(c)).</p>
<p>PLE:</p>	<p>This period of uniformed service is ordered under</p>	<p>10 USC § 12301(h)</p>	<p>.....</p>	<p>Therefore, the service is nonexempt under USERRA's five-year service limitation (38 USC 4312(c)).</p>

