



1205
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MEMORANDUM

From: *M. W. Sibley RDML*
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CG-13

To: CG-131
CG PSC

Subj: CIVILIAN REEMPLOYMENT OF COAST GUARD MILITARY PERSONNEL

Ref: (a) Civilian Employment and Reemployment Rights of Applicants for, and Service Members and Former Service Members of the Uniformed Services, DODI 1205.12, 24 February 2016
(b) SECDEF/MR memorandum of 30 May 2018

1. This memorandum clarifies current policy regarding 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 absences 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 a member of the uniformed services from the five-year cumulative service limit.

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

a. Periods of service performed by a Coast Guard Reserve Component (RC) member 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. § 12304b; 10 U.S.C § 12305; 14 U.S.C § 331; 14 U.S.C § 332; 14 U.S.C § 359; 14 U.S.C § 360; 14 U.S.C § 367; 14 U.S.C § 712.

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) 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 addresses 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 USERRA's five-year cumulative limit:

a. Periods of service performed by a RC member 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 support or indirect support to missions and 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 a war or national emergency. Indirect support must be in a position whose majority of duties performed support, but may not necessarily be physically located with, the associated mission or operation.

b. Periods of service performed by a RC member for initial active duty for recruit training 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 order(s) is exempt.

6. Periods of service that qualify for an exemption from USERRA's five-year limit must have the appropriate statement from enclosure (1) on their orders stating the period of service is exempt under USERRA's five-year limit, 38 USC § 4312. If this statement should have been but was not included in the 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 on 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 for Coast Guard leaders at all levels to continue to maintain the balance between mission, civilian employer, and family for each Coastguardsman in order to better sustain a healthy operational Reserve.

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Enclosure: (1) 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.
1				Therefore, the service is exempt/nonexempt under USERRA's five-year service limitation (38 USC 4312(c))
2	"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))
3				Therefore, the service is nonexempt under USERRA's five-year service limitation (38 USC 4312(c)).
4	EXAMPLE: 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 exempt under USERRA's five-year service limitation (38 USC 4312(c)).
5	EXAMPLE: This period of uniformed service is ordered under	10 USC § 12301(d)		Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).
6				Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).
7	EXAMPLE: 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)).
8	EXAMPLE: 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)).
9	EXAMPLE: 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 exempt under USERRA's five-year service limitation (38 USC 4312(c)).
10	EXAMPLE: This period of uniformed service is ordered under	32 USC § 504		Therefore, the service is nonexempt under USERRA's five-year service limitation (38 USC 4312(c)).
11				Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).
12	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 exempt under USERRA's five-year service limitation (38 USC 4312(c)).
			and fulfill's 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 USC 4312(c)).
13	This period of uniformed service is ordered under	(fill in statutory authority)		Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).
			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 exempt under USERRA's five-year service limitation (38 USC 4312(c)).
14	This period of uniformed service is ordered under	(fill in statutory authority)		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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1	"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)).
2	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)).
15	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)).
16	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)).
17	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)).
18	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)).
19	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)).
20	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)).
21	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)).
22	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)).
23	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)).
24	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)).
25	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)).
26	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)).
27	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)).
28	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)).
29	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)).
30	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)).
31	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)).
32	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)).
33	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)).
34	This period of uniformed service is ordered under			Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).

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1				
2	"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))
35	This period of uniformed service is ordered under	14 USC § 367	-----	Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).
36	This period of uniformed service is ordered under	14 USC § 712	-----	Therefore, the service is exempt under USERRA's five-year service limitation (38 USC 4312(c)).
37				
38	EXAMPLE: This period of uniformed service is ordered under	32 USC § 504	-----	Therefore, the service is nonexempt under USERRA's five-year service limitation (38 USC 4312(c)).
39	EXAMPLE: This period of uniformed service is ordered under	10 USC § 12301(d)	-----	Therefore, the service is nonexempt under USERRA's five-year service limitation (38 USC 4312(c)).
40	EXAMPLE: This period of uniformed service is ordered under	10 USC § 12301(h)	-----	Therefore, the service is nonexempt under USERRA's five-year service limitation (38 USC 4312(c)).
41				

