

Technical Bulletin 3

Date Revised: August 1, 2006

Uniformed Services Reemployment Rights Act of 1994 (USERRA) 38 U. S. C. 4301 to 4333

In pertinent part:

Advance Notice Section 4312(a)(1)

The law requires all employees to provide their employers with advance notice of military service.

Notice may be either written or oral. It may be provided by the employee or by an appropriate officer of the branch of the military in which the employee will be serving. However, no notice is required if:

- Military necessity prevents giving notice; or
- The giving of notice is otherwise impossible or unreasonable.

Duration of Service Section 4312(c)

The cumulative length of service that causes a person's absence from a position of employment with a given employer may not exceed five years, subject to a number of exceptions set forth below.

Most types of service will be cumulatively counted in the computation of the five year period.

Exceptions. Eight categories of service are exempt from the five year limitation. These include:

1. **Service required beyond five years to complete an initial period of obligated service. (Section 4312(c)(1))** Some military specialties, such as the Navy's nuclear power program, require initial active service obligations beyond five years.
2. **Service from which a person, through no fault of their own, is unable to obtain a release within the five year limit. (Section 4312(c)(2))** For example, the five year limit will not be applied to members of the Navy or Marine Corps whose obligated service dates expire while they are at sea.

Nor will it be applied when service members are involuntarily retained on active duty beyond the expiration of their obligated service date. This was Operations Desert Shield and Storm.

3. **Required training for reservists and National Guard members. (Section 4312(c)(3))** The two week annual training sessions and monthly weekend drills mandated by statute for reservists and National Guard members are exempt from the five year limitation.

Also excluded are additional training requirements certified in writing by the Secretary of the service concerned to be necessary for individual professional development.

4. **Service under an involuntary order to, or to be retained on, active duty during domestic emergency or national security related situations. (Section 4312(c)(4)(A))**
5. **Service under an order to, or to remain on, active duty (other than for training) because of a war or national emergency declared by the President or Congress. (Section 4312(c)(4) (B))** This category includes service not only by persons involuntarily ordered to active duty, but also service by volunteers who receive orders to active duty.
6. **Active duty (other than for training) by volunteers supporting “operational missions” for which Selected Reservists have been ordered to active duty without their consent. (Section 4312(c)(4)(c))** Such operational missions involve circumstances other than war or national emergency for which, under presidential authorization, members of the Selected Reserve may be involuntarily ordered to active duty under Title 10, U.S.C. Section 12304. The US military involvement in Afghanistan and Iraq are two examples of such an operational mission.

This sixth exemption for the five year limitation covers persons who are called to active duty after volunteering to support operational missions. Persons involuntarily ordered to active duty for operational missions would be covered by the fourth exemption above.

7. **Service by volunteers who are ordered to active duty in support of a “critical mission or requirement” in times other than war or national emergency and when no involuntary call up is in effect. (Section 4312(c)(4)(D))** The Secretaries of the various military branches each have authority to designate a military operation as a critical mission or requirement.
8. **Federal service by members of the National Guard called into action by the President to suppress an insurrection, repel an invasion, or to execute the laws of the United States. (Section 4312(c)(4)(E))**

Disqualifying Service Section 4304

When would service be disqualifying? The statute lists four circumstances:

1. Separation from the service with a dishonorable or bad conduct discharge.
2. Separation from the service under other than honorable conditions. Regulations for each military branch specify when separation from the service would be considered “other than honorable.”
3. Dismissal of a commissioned officer in certain situations involving a court martial or by order of the President in time of war.
4. Dropping an individual from the rolls when the individual has been absent without authority for more than three months or is imprisoned by a civilian court. (Section 1161(b) of Title 10)