

# LAW REVIEW 1035

## **The Definition of "Uniformed Services"**

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### **1.1.3.3--National Guard Service**

Section 4303 of USERRA (38 U.S.C. 4303) defines 16 terms, including "uniformed services" and "service in the uniformed services."

When a statute defines a term, the statutory definition is controlling for purposes of that statute. If the term is not defined in that particular statute, one should look elsewhere in the U.S. Code for a definition. If the term is not defined in the U.S.C., a court will consult dictionaries to determine the "commonly understood" meaning of the term.

USERRA's definition of "uniformed services" is as follows: "The term 'uniformed services' means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the president in time of war or national emergency." 38 U.S.C. 4303(16).

USERRA's definition of "service in the uniformed services" is as follows: "The term 'service in the uniformed services' means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by section 12503 of Title 10 or section 115 of Title 32." 38 U.S.C. 4303(13).

USERRA does not define the term "active duty," but that term is defined in the definitions section of Title 10, as follows: "The term 'active duty' means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the secretary of the military department concerned. Such term does not include full-time National Guard duty." 10 U.S.C. 101(d)(1). Please note that the statutory definition of "active duty" includes "active duty for training."

The definitions section of Title 10 defines "inactive duty training" as follows:

"The term "inactive-duty training" means—

**(A)** duty prescribed for Reserves by the secretary concerned under section 206 of title 37 or any other provision of law; and

**(B)** special additional duties authorized for Reserves by an authority designated by the secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned. Such term includes those duties when performed by Reserves in their status as members of the National Guard." 10 U.S.C. 101(d)(7).

The definitions section of Title 10 defines the term "full-time National Guard duty" as follows: "The term 'full-time National Guard duty' means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a state or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of Title 32 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States." 10 U.S.C. 101(d)(5) (emphasis supplied).

The definitions section of Title 10 defines "Army National Guard" as follows: "The term 'Army National Guard' means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that—

- (A)** is a land force;
- (B)** is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;
- (C)** is organized, armed, and equipped wholly or partly at federal expense; and
- (D)** is federally recognized." 10 U.S.C. 101(c)(2).

The definitions section of Title 10 defines "Army National Guard of the United States" as follows: "The term 'Army National Guard of the United States' means the Reserve Component of the Army all of whose members are members of the Army National Guard." 10 U.S.C. 101(c)(3).

The definitions section of Title 10 similarly defines "Air National Guard" and "Air National Guard of the United States." 10 U.S.C. 101(c)(4) and (5).

Article I, Section 8 of the Constitution enumerates the powers granted to Congress. The 16th clause is as follows: "To provide for organizing, arming, and disciplining the militia, and for the governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress."

If you have questions, suggestions, or comments, please contact Captain Samuel F. Wright, JAGC, USN (Ret.) (Director of the Servicemembers' Law Center) at [swright@roa.org](mailto:swright@roa.org) or 800-809-9448, ext. 730.