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I Need Time off from my Job to Travel to my Drill Weekend

By Captain Samuel F. Wright, JAGC, USN (Ret.)

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Q: I am a First Lieutenant in the Air National Guard and a member of ROA and I work as a firefighter for a medium sized city. Like other firefighters, I work a 24-on and 48-off schedule. My 24-hour shift runs from 7:30 am to 7:30 am the next day, followed by two days off.

One weekend per month, I travel to my drill weekend at an Air National Guard base that is a four-hour drive from the city where I live and work. I normally drive down on Friday afternoon or early Friday evening and check in to the “contract berthing” hotel. That gives me a good night’s sleep Friday night, and I arrive at the drill site prior to 7:30 in a rested condition.

Three or four times per year, I am scheduled to work at my firefighter job from 7:30 am Friday to 7:30 am Saturday on my Air National Guard drill weekend. Obviously, this does not work. If I leave my civilian job at 7:30 am on Saturday, it will be 11:30 am by the time I arrive at the Air National Guard drill site—that means that I miss about 25% of the scheduled drill weekend. Moreover, I am exhausted, meaning that I cannot perform my military duties safely and effectively.

I have told the fire chief that when I am scheduled to work on Friday before my drill weekend I need to check out and depart by 6 pm Friday, so that I can drive four hours to the drill site, check in at the hotel, and get a reasonable night’s sleep and arrive at the drill site by 7:30 am Saturday in a “fit for duty” condition.

The fire chief has adamantly refused to make any accommodation for me. He said that the fire department is required to give me time off for military duty only when there is a direct conflict between my military duty and my fire department employment. He said that there is no direct conflict here—my fire department shift ends at 7:30 am Saturday and my drill weekend starts at 7:30 am Saturday. He said that the travel time and rest time is my problem, not the fire department’s problem.

What does the Uniformed Services Employment and Reemployment Rights Act (USERRA) provide concerning this sort of situation?

A: Congress enacted USERRA in 1994, as a long-overdue rewrite of the Veterans’ Reemployment Rights Act, which goes back to 1940. USERRA is codified in title 38, United States Code, sections 4301-4335 (38 U.S.C. 4301-4335).

Section 4331(a) of USERRA [38 U.S.C. 4331(a)] gives the Secretary of Labor the authority to promulgate regulations about the application of USERRA to state and local governments and private employers. In September 2004, the Secretary published proposed USERRA regulations in the *Federal Register*. After considering the comments received and making a few adjustments, the Secretary published the final USERRA regulations in December 2005. The regulations are published in the Code of Federal Regulations (C.F.R.) in Title 20, Part 1002.

One section of the DOL USERRA Regulations addresses your issue squarely:

Must the employee begin service in the uniformed services immediately after leaving his or her employment position in order to have USERRA reemployment rights?

No. At a minimum, an employee must have enough time after leaving the employment position to travel safely to the uniformed service site and arrive fit to perform the service. Depending on the specific circumstances, including the duration of service, the amount of notice received, and the location of the service, additional time to rest, or to arrange affairs and report to duty, may be necessitated by reason of service in the uniformed services. The following examples help to explain the issue of the period of time between leaving civilian employment and beginning of service in the uniformed services:

(a) *If the employee performs a full overnight shift for the civilian employer and travels directly from the work site to perform a full day of uniformed service, the employee would not be considered fit to perform the uniformed service. An absence from that work shift is necessitated so that the employee can report for uniformed service fit for duty.*

(b) If the employee is ordered to perform an extended period of service in the uniformed services, he or she may require a reasonable period of time off from the civilian job to put his or her personal affairs in order, before beginning the service. Taking such time off is also necessitated by the uniformed service.

(c) If the employee leaves a position of employment in order to enlist or otherwise perform service in the uniformed services and, through no fault of his or her own, the beginning date of the service is delayed, this delay does not terminate any reemployment rights.

20 C.F.R. 1002.74 (emphasis supplied) (bold question in original).

I do not believe that USERRA gives you the right to leave your civilian job *during a work shift*. In these circumstances, when you are scheduled to work a 24-hour work shift in your civilian job starting at 7:30 am on the Friday before your drill weekend, you have the right to absent yourself from the entire work shift that starts at 7:30 am on Friday, with proper notice to the civilian employer, of course.

I suggest that you send a polite letter to the fire chief. Explain that you need either to miss the whole shift or to leave at 6 pm on Friday. Ask him which option is less stressful on the fire department. Try to avoid confrontation and controversy. Try to minimize the burden on the civilian employer, without detracting from your military performance and readiness.

I also suggest that you ask your Air National Guard commanding officer to send a polite letter to the fire chief, explaining that you need to miss the Friday shift or to leave prior to 6 pm Friday in order to be fit for duty Saturday morning. You should also contact Employer Support of the Guard and Reserve (ESGR), the Department of Defense organization that works with Reserve and Guard personnel and their civilian employers on matters of this kind. You can reach ESGR toll-free at 800-336-4590.

Good luck, and let me know how this turns out.