

LAW REVIEW 15006¹

January 2015

Right to Reinstatement of Civilian Health Insurance upon Returning from Period of Uniformed Service-Continued

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4.4—SCRA right to reinstatement of health insurance coverage upon return from active duty

Q: I am a Major in the Army Reserve and a life member of the Reserve Officers Association (ROA). I read with great interest your “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), and other laws that are especially pertinent to service members. I am particularly interested in Law Review 15005, the immediately preceding article in this series, concerning the right to reinstatement of civilian health insurance upon leaving a period of active duty.

I have a husband and two young children, one of whom has serious health concerns. I am self-employed, and I do not have health insurance through my job, unlike the individuals you discussed in Law Review 15005. I have purchased a health insurance policy for my husband, my two children, and myself from the health insurance exchange established by my state, under the provisions of the Affordable Care Act.

I have been offered the opportunity to go back on active duty for a year, possibly to be extended to two years, and I am seriously considering the opportunity. If I go on active duty and discontinue my civilian health insurance, I can save a lot of money on the civilian health insurance premiums, and my family and I can use TRICARE during my active duty period. My concern is about reinstating my civilian health insurance when my active duty period is over.

If I give up my civilian health insurance upon entering active duty, does USERRA give me the right to reinstate that civilian health insurance upon release from active duty?

A: USERRA does not apply to this health insurance because you did not obtain the insurance through your civilian job, but section 704 of the SCRA gives you the right to reinstate your health insurance when you leave active duty. Here is the complete text of that section:

“§ 594. Health insurance reinstatement

¹ We invite the reader’s attention to www.servicemembers-lawcenter.org. You will find more than 1,300 “Law Review” articles about laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997, and we add new articles each week.

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(a) Reinstatement of health insurance. A servicemember who, by reason of military service as defined in section 703(a)(1), is entitled to the rights and protections of this Act shall also be entitled upon termination or release from such service to reinstatement of any health insurance that--

- (1) was in effect on the day before such service commenced; and
- (2) was terminated effective on a date during the period of such service.

(b) No exclusion or waiting period. The reinstatement of health care insurance coverage for the health or physical condition of a servicemember described in subsection (a), or any other person who is covered by the insurance by reason of the coverage of the servicemember, shall not be subject to an exclusion or a waiting period, if--

- (1) the condition arose before or during the period of such service;
- (2) an exclusion or a waiting period would not have been imposed for the condition during the period of coverage; and
- (3) in a case in which the condition relates to the servicemember, the condition has not been determined by the Secretary of Veterans Affairs to be a disability incurred or aggravated in the line of duty (within the meaning of section 105 of title 38, United States Code).

(c) Exceptions. Subsection (a) does not apply to a servicemember entitled to participate in employer-offered insurance benefits pursuant to the provisions of chapter 43 of title 38, United States Code.

(d) Time for applying for reinstatement. An application under this section must be filed not later than 120 days after the date of the termination of or release from military service.

(e) Limitation on premium increases.

(1) Premium protection. The amount of the premium for health insurance coverage that was terminated by a servicemember and required to be reinstated under subsection (a) may not be increased, for the balance of the period for which coverage would have been continued had the coverage not been terminated, to an amount greater than the amount chargeable for such coverage before the termination.

(2) Increases of general applicability not precluded. Paragraph (1) does not prevent an increase in premium to the extent of any general increase in the premiums charged by the carrier of the health care insurance for the same health insurance coverage for persons similarly covered by such insurance during the period between the termination and the reinstatement.”

50 U.S.C. App. 594.³

Under this section, you have a clear right to reinstate your health insurance coverage after you leave active duty.

³ The SCRA is codified in the Appendix of Title 50 of the United States Code, at sections 501 through 597b (50 U.S.C. App. 501-597b). Congress enacted the SCRA in 2003, as a long-overdue rewrite of the Soldiers’ and Sailors’ Civil Relief Act (SSCRA), which was originally enacted in 1917.