

**Keep Participating in the Army National Guard as a Traditional Guard Member
after you Start Drawing Active Component Retired Pay,
and Convert to a Reserve Component Retirement upon Age 60**

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Update on Sam Wright

9.0—Miscellaneous

Q: I am a Lieutenant Colonel in the Army National Guard, and I recently joined the Reserve Officers Association (ROA). I have read with great interest your “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA) and other laws that are especially pertinent to those of us who serve in the Reserve Components (RC) of the armed forces. I was particularly pleased with your series of articles (Law Reviews 16086 through 16092 and 16098, all published in September 2016) about the RC retirement system and how it relates to the Active Component (AC) retirement system.

I was born in 1972. I graduated from high school and enlisted in the Regular Army in 1990. I remained on active duty for five years, leaving in 1995. I then attended college from 1995-99 and participated in the Army Reserve Officers Training Corps (ROTC). In 1999, I graduated and was commissioned a Second Lieutenant. I served on active duty as a junior officer for six years, until 2005. For the next two years, I was a traditional National Guard member. In 2007, I returned to full-time active duty, this time in the Active Guard and Reserve (AGR) Program.

On September 30, 2016, I completed 20 years of full-time active duty and retired as a Lieutenant Colonel. This month, I received my first retirement check.

¹ I invite the reader’s attention to www.servicemembers-lawcenter.org. You will find more than 1500 “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find 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. I am the author of more than 1300 of the articles.

² BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General’s Corps officer and retired in 2007. I am a life member of ROA. For six years (2009-15), I was the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA. Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. Although I am no longer employed by ROA, I have continued writing new “Law Review” articles as a volunteer and ROA member. I am available by e-mail at SWright@roa.org or by telephone at (800) 809-9448, extension 730.

I want to keep participating in the Army. I have heard that it is possible for me to return to my former status (2005-07) as a traditional National Guard member, while drawing my Regular Army retired pay. Is that true?

A: Yes. I invite your attention to section 12741(a)(1) of title 10 of the United States Code. That section provides:

Notwithstanding the requirement in paragraph (4) of section 12731(a) of this title that a person may not receive retired pay under this chapter [RC retired pay at age 60, under chapter 1223] when the person is entitled, under any other provision of law, to retired pay or retainer pay, a person may elect to receive retired pay under this chapter, instead of receiving retired or retainer pay under chapter 65, 367, 571, or 867 of this title if the person—

- (A) satisfies the requirements specified in paragraphs (1) and (2) of such section³ for entitlement to receive retired pay under this chapter [chapter 1223];*
- (B) served in an active status in the Selected Reserve of the Ready Reserve after becoming eligible for retirement under chapter 65, 367, 571, or 867 of this title (without regard to whether the person actually retired or received retired or retainer pay under one of those chapters); and*
- (C) completed not less than two years of satisfactory service (as determined by the Secretary concerned⁴) in such active status (excluding any period of active service).⁵*

Under this section, you can return to your former status as a traditional National Guard member for at least two years. Then, when you turn 60 you can apply to have your AC retirement converted to an RC retirement.⁶

Q: How will I benefit from converting my AC retirement to an RC retirement upon reaching my 60th birthday?

³ Under paragraph (1) of section 12731(a), a person must have attained the age of 60 to qualify for RC retirement under chapter 1223). Under paragraph (2), the person must have achieved at least 20 good years for RC retirement purposes.

⁴ The Secretary concerned is the Secretary of the Army, with respect to matters concerning the Army. See 10 U.S.C. 101(a)(9)(A).

⁵ 10 U.S.C.12741(a)(1) (emphasis supplied).

⁶ As I explained in detail in Law Review 16090 (September 2016), a reservist or National Guard member who performed contingency service as a member of the Ready Reserve after January 28, 2008 can qualify for early (prior to age 60) receipt of RC retirement. If you performed qualifying contingency service, you may be able to apply for the conversion before your 60th birthday in 2032.

A: If you participate as a traditional National Guard member for two years or more, you will earn additional retirement points that will figure into your RC retirement check, if you convert. Moreover, after you convert your monthly RC retirement check will be computed based on your “high three” salary—this is the O-5 or O-6 (if you are promoted) salary in effect between your 57th birthday and your 60th birthday, that is between 2029 and 2032. That salary will likely be substantially higher than your O-5 salary in 2013-16, the figure used to compute your regular monthly retirement check starting this month.

If you can manage to get promoted from Lieutenant Colonel to Colonel as a traditional National Guard member, that will have a significant effect in increasing the amount of your monthly RC retirement check.

Q: Let us say that I keep participating as a traditional National Guard member, and I am paid for drills and annual training. Will my receipt of compensation for National Guard training and service affect the amount of my monthly AC retirement check?

A: Yes, but only for the days when you perform military duty and are compensated for it. For example, let us say that you perform two days of compensated military duty during the month of November. Your retired pay for that month will be reduced by 2/30.