



DEPARTMENT OF THE AIR FORCE
WASHINGTON DC



OFFICE OF THE ASSISTANT SECRETARY

14 Jul 2017

MEMORANDUM FOR CHIEF OF STAFF OF THE AIR FORCE
DIRECTOR, AIR NATIONAL GUARD
CHIEF, AIR FORCE RESERVE

FROM: Assistant Secretary of the Air Force (Manpower and Reserve Affairs)

SUBJECT: Civilian Reemployment Protections for Air Force Military Personnel

References: (a) DODI 1205.12 *"Civilian Employment and Reemployment Rights of Applicants for, and Service Members and Former Service Members of the Uniformed Services"*, 02/24/2016
(b) SAF/MR Memorandum, Subject, *"Civilian Reemployment Protections for Air Force Military Personnel"*, 7/13/2015

This memorandum incorporates, clarifies and supersedes reference (b). Current policy regarding members' rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA), Title 38, United States Code (U.S.C.), Chapter 43, is clarified by this memorandum. USERRA provisions provide protection to anyone absent from a position of civilian employment because of uniformed service if a number of conditions are met, one of which is that the cumulative length of absences from civilian employment does not exceed five years. In addition, USERRA exempts certain periods of active duty performed by a member of the uniformed services from the five year cumulative service limit.

USERRA and DoDI 1205.12 provide authority for the Secretary of the Air Force to designate certain other periods of service as exempt from the five year limit. This memorandum addresses designated exemptions given under my authority, acting on behalf of the Secretary of the Air Force.

I categorically approve the following exemptions from the five-year limit:

- a. Periods of service performed by an Air Force Reserve Component (ARC) member ordered to or retained on active duty under 10 U.S.C. §12301(d) on or after September 14, 2001, for the purpose of providing direct or indirect support of missions and operations associated with the National Emergency by Reason of Certain Terrorist Attacks, declared by Presidential Proclamation 7463, dated September 14, 2001, and successive continuations. The basis for the order must be linked to the war or national emergency.¹ Members who meet this criterion shall have the following statement included in the orders: "The period of service under these orders is exempt from the five-year limit as provided in 38 U.S.C. § 4312 (c)(4)(B)." If this statement should have been but was not included in the activation orders, the statement should be included in a separate document and retained in the service member's personnel file.
- b. Periods of service performed by an ARC member ordered to or retained on active duty under 10 U.S.C. §12304(a) or §12304(b) on or after October 1, 2015.

¹ Linkage to the National Emergency may be shown by one or more various 'indicia', including citation to Presidential Proclamation 7463; or, to Executive Order 13223; or to a named operational mission associated with the National Emergency; or to the funding sources that support named operations or missions associated with the National Emergency. In most cases, members ordered to duty under 10 U.S.C. §12301(d), but serving under U.S.C. §12310 (AGR duty); 10 U.S.C. § 10211, or 10 U.S.C. §12402 will not fit this criteria.

c. Periods of service performed by a member of the Regular Air Force retained on active duty under 10 U.S.C. § 12305 or other provision of the law on or after September 14, 2001, for the purpose of providing direct or indirect support of missions and operations associated with the National Emergency by Reason of Certain Terrorist Attacks, declared by Presidential Proclamation 7463, dated September 14, 2001, and successive continuations.

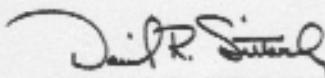
d. Periods of service performed by an ARC member for the purpose of fulfilling training requirements necessary for professional development through in-residence Developmental Education (DE).² This categorical exemption is specifically based on the authority of 38 U.S.C. §4312 (c)(3) which exempts the service of a member who is performing duty "necessary for professional development" and certifies the approved DE in accordance with Reference (a).

e. Periods of service when an ARC member performs duty to fulfill additional training requirements necessary for professional development not specifically exempted above, or for the completion of skill training or retraining, to include "Seasoning Training" after the completion of AF Specialty Code (AFSC) awarding training. This categorical exemption is for duty performed for all Technical and Professional training based at school houses or formal courseware listed in the Air Force Education and Training Course Announcements. This includes AFSC awarding courses and required supplemental training. Members will have the following statement included on their orders: "The periods of service under these orders is exempt from the five-year limit as provided in 38 U.S.C. § 4312 (c)(3)." ARC members enrolled in sister service courses must apply to SAF/MR for a USERRA exemption, unless the sister service is the executive agent for a mandatory course for members prior to deployment.

Individual exemptions (non-categorical) for periods of service when an ARC member is ordered to active duty in support of a critical mission or requirement (as defined in DoDI 1205.12, Enclosure 2, paragraph b (4)(c)) of the uniformed services must be approved by SAF/MR. The designation of a critical requirement to gain necessary experience to qualify for key leadership positions must be employed judiciously. This exemption will not be used to routinely extend reemployment rights or to extend individuals in repeated statutory or Active Guard/Reserve (AGR) tours. Individual exemptions will not be granted if the member has sufficient cumulative five year service limit time remaining to complete the term of duty.

Requests for individual exemptions should be reviewed and signed by NGB/CF or AF/RF. NGB/CF and AF/RF may disapprove requests (disapproved packages need not be routed further). All individual exemption requests will be staffed through SAF/MRR and AF/JAA for a recommendation to the Assistant Secretary of the Air Force (Manpower and Reserve Affairs) (SAF/MR).

Commanders must remain vigilant to potential hardships to employers when approving short notice orders for military duty. Employers understand their obligation. I ask each commander to consider the impact on the employer and whether the training must be accomplished during peak work cycles within various industries and employment sectors. Finally, I ask for Air Force leaders at all levels to continue to maintain the balance between mission, civilian employer, and family for each Airman in order to better sustain a healthy operational reserve.



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Acting Assistant Secretary of the Air Force
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² Approved in-resident DE are listed in Attachment 2, Officer/Civilian DE Institutions and Programs in AFI 36-2301, Developmental Education (16 July 2010).