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State Pension Credit for your Military Service.

Alabama Is Violating Federal Law.

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1.8—Relationship between USERRA and other laws/policies.

3.0—Reserve retirement and civilian employment.

Q: I am a Colonel in the Army Reserve (USAR) and a life member of the Reserve Organization of America (ROA). For many years, I have read with great interest your “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), and I have shared your articles with my colleagues and

¹ I invite the reader’s attention to www.roa.org/lawcenter. You will find more than 2,300 “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 Spouses’ Protection Act (USFSPA), the title 38 chapters that provide for veterans’ benefits administered by the Department of Veterans Affairs (VA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. I am the author of more than 90% of the articles, but we are always looking for “other than Sam” articles by other lawyers.

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. I have dealt with USERRA and the Veterans’ Reemployment Rights Act (VRRRA—the 1940 version of the federal reemployment statute) for 44 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. §§ 4301-35). I have also dealt with the VRRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

subordinates in the USAR. Your articles have been immensely helpful to me in understanding my legal rights relating to my civilian employer, the local school district, and my USAR participation.

I was born in May 1979. After I graduated high school, I attended our State university and participated in the Army's Reserve Officers Training Corps (ROTC). When I graduated from college in May 2001, I was simultaneously commissioned as a Second Lieutenant in the Army. I spent exactly four years on active duty. In May 2005, I left active duty and affiliated with the USAR.

That same month, I started a new civilian job, working as a teacher for the school district in my hometown in Alabama. When I began my career as a teacher, I was given the opportunity to purchase teacher retirement credit for my four years of active duty (2001-05). The amount that I was required to pay for that credit was computed as a percentage of what I earned from the Army for those four years of service. The Defense Finance & Accounting Service (DFAS) computed what I earned, the school district determined the amount that I was required to pay, and I paid that amount during my first year as a teacher by means of payroll deductions from my salary for each pay period.

A public school teacher in Alabama is entitled to a generous pension after serving 25 years of teacher service. I always figured that I would reach the 25-year point in May 2026, based on my credit for the four years of active duty (2001-05) and my continuous service as a teacher for 21 years.

I missed the 2007-08 school year when I was involuntarily called to active duty and deployed to Iraq with my USAR unit. Other than that year, I only missed a few days of work because of my drill weekends and annual training in the USAR. In 21 years, I only missed five days of work due to illness and ten due to jury service. All of my absences due to USAR training and service were protected by USERRA.

Now that May 2026 is only two months away, I inquired at the school district's personnel office about my years of pension credit for teacher retirement purposes. The personnel office told me that I had no right to purchase teacher retirement credit for the four years of active duty (2001-05) before I started my teaching career because I was planning to use and later did use that same period of military service to qualify for my USAR retirement and to determine the amount of my USAR monthly retirement check. The school district personnel office says that our State law forbids such "double-dipping." What do you say about that?

A: The Alabama Code provides as follows:

Anything in this chapter to the contrary notwithstanding, if any person becoming a member of the Teachers' Retirement System after October 1, 1975 shall have served in the armed forces of the United States, exclusive of service in a reserve or national guard component of any branch of the armed forces, such member may be granted by the Board of Control membership service credit for such period of service in the armed forces; provided, that such member pays into the Teachers' Retirement System, in a lump sum within one year next after the first day of the pay period in which the first deduction to the Teachers' Retirement System is

*made, after having been honorably discharged from the armed forces, an amount equal to four percent of the average compensation paid to a teacher during each claimed year of full-time military service, plus and together therewith, eight percent interest compounded from the last date of such claimed military service; provided further, that no member shall receive more than four years' membership service credit for military service, and no credit for military service shall be granted if such member is receiving military service retirement benefits, other than disability allowances or benefits, from any branch of the United States armed forces or by reason of any service in any branch of the armed forces or if such member received anything other than an honorable discharge.*³

The italicized language above directly violates section 12736 of title 10 of the United States Code, which provides:

No period of service included wholly or partly in determining a person's right to, or the amount of, retired pay under this chapter may be excluded in determining his eligibility for any annuity, pension, or old-age benefit, under any other law, on account of civilian employment by the United States or otherwise, or in determining the amount payable under that law, if that service is otherwise properly credited under it.⁴

Applying section 12736, the United States Court of Appeals for the 9th Circuit⁵ invalidated California's "no double-dipping" law as applied to

³ Alabama Code § 16-25-3(e) (emphasis supplied).

⁴ 10 U.S.C. § 12736.

⁵ The 9th Circuit is the intermediate federal appellate court that sits in San Francisco and hears appeals from district courts in Alaska, Arizona, California, Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.

retirement benefits under Chapter 1221 of title 10 for “non-regular service.”⁶

In 1948, Congress enacted Chapter 1221 of title 10, providing for retirement benefits starting at age 60 for individuals who achieved at least 20 “good years” of participation in the National Guard or Reserve or by a combination of active duty and National Guard or Reserve service. Section 12736 has been part of this chapter since 1948, although originally the section number was different from the current number.

More than 16 million individuals served on active duty in the United States armed forces during World War II. President Truman and many congressional leaders sought to establish a Reserve Component Retirement System to encourage qualified veterans of World War II to continue their training and to make themselves available for future emergencies, and ROA strongly supported this effort. At ROA headquarters, we have displayed the pen that President Truman (one of the founders of our organization in 1922) used to sign this important legislation.

Just two years later, in June 1950, North Korea invaded South Korea and President Truman responded appropriately and forcefully, and the Korean War was on. This new Reserve Component Retirement System was immensely helpful to Reserve Components in providing ready and qualified personnel for this new emergency. In the 76 years since 1950, the Reserve Component Retirement System has been essential in

⁶ See *Cantwell v. County of San Mateo*, 631 F.2d 631 (9th Cir.), cert. denied, 450 U.S. 998 (1980). See also *Hereford v. Tennessee Valley Authority*, 1999 U.S. App. LEXIS 3647 (Fed. Cir. March 5, 1999); *Almeida v. Retirement Board of the Rhode Island Employees Retirement System*, 116 F. Supp. 2d 269 (D.R.I. 2000). See generally *Law Review* 57 (November 2002).

enabling the services and their Reserve Components to recruit Reserve and National Guard service members and to retain those service members for 20 years or more.

If a State government or other employer is permitted to deny Reserve Component service members a tangible benefit, like the opportunity to purchase civilian retirement credit for prior military service, based on their decisions to continue their military service on a part-time basis after leaving active duty, the intended incentive provided by the Reserve Component Retirement System would be at least partially offset. Section 12736 is an integral part of the Reserve Component Retirement System.

Q: Section 16-25-3(e) of the Alabama Code also seems to require that I have received an “honorable discharge” from the Army before I purchased the teacher retirement credit for my 2001-05 active duty period. I did not receive an “honorable discharge” when I left active duty in May 2005. Rather, I received a Department of Defense Form 214 (DD-214) showing that I served on active duty from May 2001 to May 2005 and that my service was honorable, among other information. After each period of full-time active duty that I have performed, I have received a new DD-214. I have never been “discharged” from the Army. After each active duty period, I have reverted to the status of a part-time Army Reserve officer. How does this affect my eligibility to purchase teacher retirement credit for my 2001-05 active duty?

A: Denying you the right to purchase teacher retirement credit for your active duty period on the grounds that you received a DD-214, rather

than an honorable discharge, when you left active duty equally violates section 12736.

Q: Does Alabama’s “no double dipping” clause also violate USERRA?

A: Yes. Section 4311 of USERRA⁷ makes it unlawful for an employer to discriminate against those who are serving or have served in the uniformed services with respect to any “benefit of employment.” The opportunity to purchase teacher retirement credit for your 1997-2001 active duty period is clearly a benefit of employment. Denying you that opportunity because you chose to continue your participation in the Army on a part-time basis, in the Army Reserve, after you left active duty clearly violated section 4311.⁸

Q: What is the relationship between USERRA and State laws?

A: USERRA is a floor and not a ceiling on the employment rights of those who are serving or have served our country in uniform. USERRA does not supersede or override a State law that provides service members and veterans with *greater or additional rights, over and above USERRA*. USERRA overrides State laws that purport to limit USERRA rights or that impose additional prerequisites upon the exercise of USERRA rights. Section 4302 of USERRA provides:

(a)

Nothing in this chapter shall supersede, nullify or diminish any Federal or State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that

⁷ 38 U.S.C. § 4311. I have placed the entire text of section 4311 at the end of this article.

⁸ See *Hereford v. Tennessee Valley Authority*, 1999 U.S. App. LEXIS 3647 (Fed. Cir. March 5, 1999).

establishes a right or benefit that is more beneficial to, or is in addition to, a right or benefit provided for such person in this chapter.

(b)

This chapter supersedes any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.⁹

The United States Constitution provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.¹⁰

More than two centuries ago, the Supreme Court, in one of its seminal cases, held that the Supremacy Clause means what it says and that a Federal statute overrides a conflicting State statute or even a State constitution.¹¹

Q: My niece was born and raised here in Alabama, like me. She graduated from high school in 2016 and then attended the United

⁹ 38 U.S.C. § 4302.

¹⁰ United States Constitution, Article VI, Clause 2. This provision is called the “Supremacy Clause.” Yes, it is capitalized just that way, in the style of the late 18th Century.

¹¹ *Gibbons v. Ogden*, 22 U.S. 1 (1824).

States Naval Academy in Annapolis, Maryland. She graduated and was commissioned as an Ensign in May 2020. She served active duty for five years, until May 2025, when she left active duty and affiliated with the Navy Reserve. She started a civilian job for the State of Alabama, not as a teacher, in July 2025. She sought to purchase State retirement credit for her five years of active duty, or at least for four of those years. The personnel office told her that she cannot purchase State retirement credit for her active-duty Navy time because she has been credited with Navy Reserve retirement credit for those active-duty years.

Section 16-25-3(e) of the Alabama Code applies to the retirement system for public school teachers in this State. Does a similar “no double dipping” rule apply to the retirement system for State employees?

A: Yes. Here is the pertinent subsection of the Alabama Code:

Any active and contributing member of any one of the state of Alabama retirement systems who has been such a member for 10 consecutive years and has not previously purchased credit for military service with any one of the state of Alabama retirement systems may hereby claim and purchase credit in his or her respective retirement system for up to four years' creditable service for time which such member has served in the active full-time military service of the armed forces of the United States, exclusive of any summer, weekend, or other part-time active military service in any reserve or national guard component of any branch of the armed forces, *provided said member has not received credit toward retirement status in such retirement system*

*for said military service, and further provided that such member shall receive no credit for military service if such member is receiving military service retirement benefits other than disability allowance or benefits from any branch of the United States armed forces or by reason of any such service in any branch of the armed forces; and provided further that such member received an honorable discharge for and including the claimed military service.*¹²

Alabama’s “no double dipping” rule cannot constitutionally be applied to employees who affiliated with a Reserve Component of the armed forces after leaving active duty.

Q: My cousin graduated from the United States Military Academy and served on full-time active duty for 29 years, before he retired as a Colonel in 2023. He then started a job as a public school teacher in Alabama in September 2023. Is he entitled to purchase four years of teacher retirement credit for four of his 29 active-duty years?

A: No. Section 12736 refers to retirement “under this chapter”— meaning the chapter of title 10 of the United States Code that provides for retirement for “non-regular” service. Your cousin’s retirement is under a different chapter of title 10. Section 12736 does not apply to your cousin’s situation.

Are you affected by this issue? If so, we want to hear from you.

If you are affected by this issue, or if you have a friend or relative who is affected, please contact me at SWright@roa.org.

¹² Alabama Code § 36-27-49(a) (emphasis supplied).

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ROA is the only national military organization dedicated exclusively to America's reserve components — all eight of them. From the 6,179 members of the Coast Guard Reserve to the 329,705 soldiers of the Army National Guard, ROA exists to serve the nearly 773,000 men and women who answer the call while maintaining civilian lives. No other organization does what we do for the people we serve.

Our roots run deep. On October 2, 1922, veterans of the Great War gathered at Washington's historic Willard Hotel — at the invitation of General of the Armies John J. Pershing — to build something lasting. One of the junior officers in that room was Captain Harry S. Truman, who, as President, signed ROA's congressional charter in 1950. That charter gives us a clear mission: advocate for policies that ensure adequate national security. For more than a century, we've made the case that America's Reserve Components and National Guard are among the most cost-effective pillars of our national defense.

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