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Secretary of War Pete Hegseth Issued an Important Memorandum on 3/23/2026. How Does this Affect the Entitlements of National Guard Service Members under USERRA and the SCRA? What about PCA and the UCMJ? What about Federal Military Pay and Retirement?

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

1.1.3.3—USERRA applies to National Guard service.

1.3.1.2—Character and duration of service.

4.0—SCRA generally.

On 3/23/2026, Secretary of War Pete Hegseth issued an important memorandum, and I have placed the entire text of that memorandum at the end of this article. The title of the memorandum is “Determination of Alignment for Specified Missions Performed by

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.

Members of the National Guard in a Title 32 Duty Status.” This article discusses the impact of this memorandum on the rights of Army National Guard (ARNG) soldiers and Air National Guard (ANG) airmen under the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Servicemembers Civil Relief Act (SCRA).

Q: What is the Army National Guard of the United States (ARNGUS)? What is the Air National Guard of the United States (ANGUS)? How are they different from the Army Reserve and the Air Force Reserve?

A: The Army National Guard of the United States (ARNGUS) is one of the seven Reserve Components of the armed forces. The ARNGUS is separate from and different from the Army Reserve (USAR). Similarly, the Air National Guard of the United States (ANGUS) is separate and different from the Air Force Reserve (USAFR).³

When Mary Jones (MJ) joined the Texas Army National Guard, she joined two overlapping but separate legal entities. She joined the *Texas Army National Guard*, which is the modern-day equivalent of the Texas Militia. In that capacity, she can be called to duty by the Governor of Texas for State emergencies like hurricanes, floods, riots, and epidemics. MJ simultaneously joined the Army National Guard of the United States, which is one of the seven Reserve Components of the armed forces.⁴ Unfortunately, this stuff is complicated. During her ARNG career, MJ will serve in four separate statuses.⁵ The four statuses are:

³ The USAFR and USAR are purely federal entities. USAR soldiers and USAFR airmen are not subject to control by State or territorial governors.

⁴ In ascending order of size, the seven Reserve Components are the Coast Guard Reserve (USCGR), the Marine Corps Reserve (USMCR), the Navy Reserve (USNR), the Air Force Reserve (USAFR), the Air National Guard of the United States (ANGUS), the Army Reserve (USAR), and the Army National Guard of the United States (ARNGUS). The United States Space Force, our nation’s newest armed force, does not have a separate Reserve Component. Rather, the Space Force has a single component that includes both full-time and part-time service members.

⁵ Like the Army National Guard, the Air National Guard is a hybrid Federal-State entity, and Air National Guard members similarly have these four statuses at different times.

- a. Title 10 status
- b. Title 32 status
- c. State active duty
- d. Days when she does not perform any Federal or State military duty.

MJ's status for one legal purpose, like USERRA protection for her civilian job, is not necessarily the same as her status for another legal purpose, like applicability of the SCRA, the Uniform Code of Military Justice (UCMJ), or the Posse Comitatus Act (PCA).

Explanation

When an individual (like MJ) enlisted in the Army National Guard, she joined two overlapping but legally distinct entities.⁶ She joined the Army National Guard of the United States (ARNGUS), one of the seven Reserve Components of the United States armed forces. She also joined the Army National Guard of her specific State—let us say Texas. The Army National Guard of Texas is the modern-day equivalent of the Texas Militia.

In her ARNGUS (title 10) status, MJ can serve on active duty voluntarily or she can be called involuntarily under title 10 of the United States Code.⁷ While in her ARNGUS status, USERRA would protect her civilian job, just like it would a member of the Army Reserve or other Reserve

⁶"The term 'Army National Guard' means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that—(A) is a land force; (B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution; (C) is organized, armed, and equipped wholly or partly at Federal expense; and (D) is federally recognized." 10 U.S.C. § 101(c)(2).

⁷Title 10 status refers to title 10 of the United States Code, which governs the armed forces of the United States. The United States Code has 52 titles, or broad subject areas. Sections are numbered consecutively within a title.

Component. While MJ is in “title 32” status, she is performing inactive duty training (drills), active-duty training (annual training), or “full-time National Guard duty.”⁸ At all other times, MJ is in “State status.” State status includes the days when MJ performs no military duty and the days when she is called to “State active duty” (SAD).⁹

Title 10 status

When MJ is in title 10 status, she is fully a member of the United States Army, just like a Regular Army soldier on full-time regular active duty. She is directed by the President and has been activated for Federal active-duty military service.¹⁰

Title 32 status

When MJ is in a title 32 status, she is paid by the Federal Government, but she is under State control.¹¹ The primary purpose of Title 32 duty is to prepare MJ and her colleagues for the contingency of being called to Title 10 duty. Title 32 duty includes active duty for training (annual training), inactive duty training (drills), and “full-time National Guard duty.”¹²

⁸Title 32 status refers to title 32 of the United States Code, which governs the National Guard.

⁹“The term “State active duty” means training or other duty, other than inactive duty [drills], performed by a member of the National Guard of a State—(A) not under section 502 of title 32 or under title 10; (B) in service to the Governor of a State; (C) for which the member is not entitled to pay from the Federal Government.” 38 U.S.C. § 4303(14).

¹⁰See 10 U.S.C. §§ 13201(d), 12302, 12304, 331, 332, 333, 12406.

¹¹See 32 U.S.C. §§ 502(f), 901, 902.

¹²“The term ‘full-time National Guard duty’ means training or other duty, other than inactive duty [drills], performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member’s status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of title 32 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.” 10 U.S.C. § 101(d)(5).

State active duty.

In her traditional role as a member of the latter-day Texas Militia, MJ can be called to state active duty by the Governor, for State emergencies like hurricanes, riots, etc.¹³ In this situation, MJ is called by the Governor, under State authority, and paid with State funds.¹⁴

The five questions:

MJ will be on title 10 duty, title 32 duty, and State active duty at various times throughout her military career. But, on most days, she is not performing Federal or State military duty. For the following five questions, the answer is yes when MJ is on title 10 duty. Therefore, we will answer the following questions as it pertains to title 32 duty or State active duty.

1. Does MJ receive Federal military pay?

Title 32 status – Yes.¹⁵

State active duty – No.

2. Is MJ's absence from her civilian job protected by USERRA?

Title 32 status – Yes.¹⁶

State active duty – Yes, under most circumstances.¹⁷

¹³*NGAUS Fact Sheet, Understanding the Guard's Duty Status*, NATIONAL GUARD ASSOCIATION OF THE UNITED STATES, <http://giveanhour.org/wp-content/uploads/Guard-Status-9.27.18.pdf> (last visited Mar. 20, 2022).

¹⁴*Id.*

¹⁵*See* 32 U.S.C. § 902.

¹⁶38 U.S.C. § 4303(13).

¹⁷*Id.*

3. Is MJ protected by the Servicemembers Civil Relief Act (SCRA)?

Title 32 status – Yes, but only under limited circumstances.¹⁸

State active duty – No.¹⁹

4. Does the Posse Comitatus Act (PCA) apply to MJ?

Title 32 status – No.²⁰

State active duty – No.²¹

The Posse Comitatus Act consists of one sentence:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years.²²

What this sentence means, in practice, is that members of the military who are subject to the law may not participate in civilian law enforcement unless doing so is expressly authorized by the Constitution or by statute. The only members of the military that are covered by the Posse Comitatus Act are Federal military personnel. While the statute only states “the Army and the Air Force” the Act has been extended to the Navy and Marine Corps as well.²³ The Coast Guard, even though

¹⁸50 U.S.C. § 3911.

¹⁹*Id.*

²⁰18 U.S.C. § 1385.

²¹*Id.*

²²*Id.*

²³10 U.S.C. § 275.

part of the Federal armed forces, is not bound by the Posse Comitatus Act due to express statutory authority to enforce federal laws generally.²⁴ Members of the National Guard are rarely covered by the Posse Comitatus Act because they often report to their State or territory governors. However, there are instances when National Guard personnel are called into federal service. When Guard personnel are, they are bound by the Posse Comitatus Act until they return to State control.

While there are no constitutional exceptions to the Posse Comitatus Act, there are statutory exceptions, like the exception for the Coast Guard. Congress has also enacted an array of extensive particularized statutes, like those permitting the president to call the armed forces in times of insurrection and domestic violence, as well as general statutes authorizing the armed forces to share information and equipment with civilian law enforcement agencies.²⁵

5. Does the Uniform Code of Military Justice (UCMJ) apply to MJ?

Title 32 status – No.²⁶

State active duty – No.²⁷

But many States have State military codes for this situation.

Q: How does the Secretary of War memorandum affect the computation of the five-year limit under USERRA?

²⁴ 14 U.S.C. § 522.

²⁵ 10 U.S.C. §§ 251—255, 271—284.

²⁶ Members of the Army National Guard of the United States and the Air National Guard of the United States are subject to the UCMJ “only when in Federal service.” 10 U.S.C. § 802(a)(3)(A)(ii).

²⁷ *Id.*

A: To have the right to reemployment after a short or long period when he or she has been away from the civilian job to perform uniformed service, an individual must meet five simple conditions.²⁸ One of the conditions is that the individual's cumulative period of uniformed service, related to the employer relationship for which he or she seeks reemployment, must not have exceeded five years.²⁹

There are nine exemptions from the five-year limit. That is, there are nine kinds of service that do not count toward exhausting an individual's five-year limit with respect to a specific employer relationship.³⁰ I have placed the entire text of section 4312(c) of USERRA at the end of this article, after the text of the Secretary of War memorandum.

The final statutory exemption from the five-year limit is as follows:

[Service by a National Guard member] ordered to full-time National Guard duty (other than for training) under section 502(f)(2)(A) of title 32 when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds, as determined by the Secretary concerned [is exempt from the five-year limit].³¹

The Secretary of War's memorandum means that service by National Guard service members for the missions mentioned in the

²⁸ See *generally* Law Review 24047 (October 2024).

²⁹ 38 U.S.C. § 4312(c).

³⁰ *Id.* See *also* Law Review 16043 (May 2016) for a detailed discussion of what counts and what does not count in exhausting an individual's five-year limit.

³¹ 38 U.S.C. § 4312(c)(4)(F).

memorandum does not count toward exhausting the five-year limits of those service members.

Q: How does the Secretary of War's memorandum affect coverage of National Guard service members under the SCRA?

A: The SCRA applies to a "servicemember" who is performing "military service." The SCRA defines the terms "servicemember" and "military service" as follows:

(1) Servicemember

The term "servicemember" means a member of the uniformed services, as that term is defined in section 101(a)(5) of title 10.

(2) Military service

The term "military service" means—

(A) in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard—

(i)

active duty, as defined in section 101(d)(1) of title 10, and

(ii)

in the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32 for purposes of responding to a national emergency declared by the President and supported by Federal funds;

(B)

in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and

(C)

any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.³²

As a result of the Secretary of War's memorandum, service by ARNG soldiers and ANG airmen for the operations mentioned in the memorandum now gives rise to SCRA protection for those soldiers and airmen. Without the memorandum, the SCRA would not apply to those soldiers and airmen.

As decisions are made at the Pentagon about the organization and deployment of service members, ROA advocates for the rights and interests of individual service members. Those who make those decisions need to be aware of the details of laws like the SCRA and USERRA. Through our "Law Review" articles and by other means, we diligently advocate for service members.

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ROA is the only national military organization dedicated exclusively to America's reserve components — all seven of them. From the 6,179

³² 50 U.S.C. § 3911(1) and (2) (emphasis supplied).

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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Reserve Organization of America
1 Constitution Ave. NE
Washington, DC 20002

Here is the entire text of the Secretary of War's memorandum dated 3/23/2026.

MEMORANDUM FOR SECRETARY OF THE ARMY, SECRETARY OF THE AIR FORCE, UNDER SECRETARY OF WAR FOR PERSONNEL AND READINESS, AND THE CHIEF OF THE NATIONAL GUARD BUREAU.

SUBJECT: Determination of Alignment for Specified Missions Performed by Members of the National Guard in a Title 32 Duty Status.

I have determined that members of the National Guard who perform full-time National Guard Duty active service under 32 U.S.C. § 502(f) in support of the following missions are responding to a national emergency declared by the President pursuant to Proclamation 10886, "Declaring a National Emergency at the Southern Border of the United States:" • National Guard Support to Immigration and Customs Enforcement/Interior Enforcement; and • National Guard Support on

the Southern Border. I have further determined that members of the National Guard who perform full-time National Guard Duty active service under 32 U.S.C. § 502(f) in support of the following missions are responding to a national emergency declared by the President pursuant to Executive Order 14097 of April 27, 2023, "Authority To Order the Ready Reserve of the Armed Forces to Active Duty To Address International Drug Trafficking," in furtherance of Executive Order 14059, of December 15, 2021 ,

"Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade."

- DC Safe and Beautiful;
- Memphis Safe Task Force; and
- Defend America' s sovereignty and curtail the threat to national security posed by drug trafficking.

Due to years of neglect, our southern border was overrun by cartels, criminal gangs, known terrorists, human traffickers, smugglers, unvetted military-age males from foreign adversaries, and illicit narcotics that harm Americans. Moreover, the health and safety of our communities and citizens are threatened by the flow of illegal drugs. Due to the gravity and emergency of these present dangers and imminent threats, it is necessary for the Armed Forces to take all appropriate action to assist our Federal and State partners. 11 11 I OSD003013-26/CMD003858-26.

The Under Secretary of War for Personnel and Readiness (USW(P&R)) is directed to incorporate members of the National Guard performing support under 32 U.S.C. § 502(f) for the above missions into appropriate Personnel and Pay Guidance for Reserve Component

members. The Secretary of the Army and the Secretary of the Air Force are directed to take necessary actions to ensure that members of the National Guard affected by this determination have a record of their eligibility for any associated entitlements or benefits, consistent with any implementation guidance issued by the USW(P&R). cc: Secretary of Veterans Affairs Under Secretary of War (Comptroller)/ Chief Financial Officer of the Department of War Director, Defense Finance and Accounting Service.

Here is the entire text of section 4312(c) of USERRA:

(c) Subsection (a) [the right to reemployment] shall apply to a person who is absent from a position of employment by reason of service in the uniformed services if such person's cumulative period of service in the uniformed services, with respect to the employer relationship for which a person seeks reemployment, does not exceed five years, **except that any such period of service shall not include any service—**

(1)

that is required, beyond five years, to complete an initial period of obligated service;

(2)

during which such person was unable to obtain orders releasing such person from a period of service in the uniformed services before the expiration of such five-year period and such inability was through no fault of such person;

(3)

performed as required pursuant to section 10147 of title 10, under section 502(a) or 503 of title 32, or to fulfill additional training requirements determined and certified in writing by the Secretary

concerned, to be necessary for professional development, or for completion of skill training or retraining; or

(4) performed by a member of a uniformed service who is—

(A)

ordered to or retained on active duty under section 688, 12301(a), 12301(g), 12302, 12304, 12304a, 12304b, or 12305 of title 10 or under section 331, 332, 359, 360, 367, or 712 of title 14;

(B)

ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(C)

ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10;

(D)

ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services;

(E)

called into Federal service as a member of the National Guard under chapter 15 of title 10 or under section 12406 of title 10; or

(F)

ordered to full-time National Guard duty (other than for training) under section 502(f)(2)(A) of title 32 when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds, as determined by the Secretary concerned.

38 U.S.C. § 4312(c) (emphasis supplied).