

**NUMBER 6 (SEPTEMBER 1998):
Character and Duration of Service**

Q:In "Law Review" Number 4 (July 1998), you said that if I leave my civilian job for service in the uniformed services and return to the same employer following service, I am entitled to be treated as if I had been continuously employed for purposes of computing my civilian pension entitlements, provided that I meet the eligibility criteria under the Uniformed Services Employment and Reemployment Rights Act (USERRA). You briefly mentioned those criteria and promised further detail in future columns.

The second criterion you mentioned was that my period of service not exceed five years. Is that limit cumulative?

A: Yes, but only so long as you are employed by or seeking reemployment with that particular civilian employer. When you start a new job with a new employer, you receive a fresh five-year limit. See 38 U.S.C. 4312(a)(2).

Q:Is this a limit on the period of service or the period of absence from my civilian job?

A:The former. See 38 U.S.C. 4312(c). Your period of absence will almost always be at least a few days longer than your period of service. For example, assume that you served on active duty from 1 July 1995 until 30 June 2000, as shown on your DD-214. You would have the right to reemployment (assuming that you meet the other eligibility criteria), because your period of service did not exceed five years, even though you left your job on 15 June 1995 and did not return until 1 August 2000.

Q:My nephew recently enlisted in the Navy and chose the nuclear power program. The contract that he signed requires him to serve on active duty for at least six years. If he serves the full six years, will he have the right to be re-employed by his pre-service civilian employer?

A:Yes, provided he meets the other eligibility criteria. The five-year limit "shall not include any service ... that is required, beyond five years, to complete an initial period of obligated service." 38 U.S.C. 4312(c)(1).

Q:Are there other exemptions from the five-year limit?

A:Yes, and they are set forth in 38 U.S.C. 4312(c). If you are involuntarily retained on or recalled to active duty, that period of involuntary service does not count toward the five-year limit. See 38 U.S.C. 4312(c)(2), (3), and (4). Moreover, if you volunteer for an operational mission for which other Reserve Component members have been recalled involuntarily, your service, although voluntary, is exempt from the five-year limit. You will need to get the "secretary concerned" to determine that your voluntary service was for the same mission for which other Reserve Component members had been called involuntarily. See 38 U.S.C. 4312(c)(4)(C). Moreover, your voluntary service can be exempted from the five-year limit if the

"secretary concerned" determines that it was "in support ... of a critical mission or requirement of the uniformed services." 38 U.S.C. 4312(c)(4)(D).

Q:Does Reserve component training count toward the five-year limit?

A:Generally, no. See 38 U.S.C. 4312 (c)(3). Regularly scheduled annual training and inactive duty training (drills) do not count toward the limit. Longer or more frequent training can be exempted from the limit if the "secretary concerned" determines such additional training "to be necessary for professional development or for the completion of skill training or retraining." 38 U.S.C. 4312 (c)(3).

Q:Who is the "secretary concerned referred to in the previous answer?"

A:This refers to the service secretary, like the Secretary of the Navy. A recently promulgated DOD Instruction permits the service secretaries to delegate this authority, but not below the Assistant Secretary level. Within the Department of the Navy, this authority has been delegated to the Assistant Secretary for Manpower & Reserve Affairs (currently Dr. Bernard Rostker).

Q:In "Law Review" Number 4, you also stated that my service must be honorable. What exactly does that mean?

A:Under USERRA, you will not have the right to reemployment, even if you meet all the other eligibility criteria, if you receive a punitive discharge or dismissal as a result of a court-martial conviction, or if you receive an "other than honorable" administrative discharge, or if you are "dropped from the rolls" of a uniformed service because of a long period of unauthorized absence or a civilian criminal conviction. See 38 U.S.C. 4304.