

**LAW REVIEW<sup>1</sup> 26034****July 2026****Yes, the Uniformed Services Employment and Reemployment Rights Act Applies to Commissioned Officers in the Public Health Service.****By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>****1.1.1.7—USERRA applies to state and local governments.****1.1.3.4—USERRA applies to PHS service.****1.3.1.3—Timely application for reemployment.****1.3.2.3—Pension credit for service time.****1.8—Relationship between USERRA and other laws/policies.**

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<sup>1</sup> I invite the reader's attention to <https://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.

<sup>2</sup> 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. As of 5/1/2026, I have come out of retirement and have joined Maher Legal Services in an "of counsel" role. You can reach me by e-mail at [samuel@maherlegalservices.com](mailto:samuel@maherlegalservices.com) or by telephone at (708) 468-8155.

**Q: I am a commissioned officer in the Public Health Service (PHS), a commissioned corps in the United States Department of Health & Human Services (DHHS), and a life member of the Reserve Organization of America (ROA). The official PHS website describes our service as follows:**

**The USPHS Commissioned Corps is one of the nation's uniformed services—a branch committed to the service of health. Officers advance our nation’s public health, serving in agencies across the government, as physicians, nurses, dentists, veterinarians, scientists, engineers, and other professionals.<sup>3</sup>**

**I am one of the members of the PHS Reserve Corps, and I serve on a part-time basis, much like a member of the Navy Reserve or any other Reserve Component. As my principal source of support for my family, I work full-time as an employee of a major county in California.**

**I am currently away from my county job for four months of full-time service as a PHS Reserve officer. I have read with great interest several of your “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA). I joined your organization as a life member because I want to support this great service that you provide for those of us who serve our country in uniform, in the PHS commissioned corps as well as the Army, Navy, Marine Corps, Coast Guard, Air Force, and Space Force.**

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<sup>3</sup> <https://www.usphs.gov/about-us>.

**As a threshold question, does USERRA apply to the PHS commissioned corps?**

**A: Yes, most definitely.** USERRA applies to any person who leaves a job (federal, state, local, or private sector) to perform “service in the uniformed services” as defined by USERRA. USERRA defines the term “uniformed services” as follows:

The term “uniformed services” means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, **the Commissioned Corps of the Public Health Service**, the commissioned officer corps of the National Oceanic and Atmospheric Administration, System members of the National Urban Search and Rescue Response System during a period of appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Assistance Act, intermittent personnel who are appointed into Federal Emergency Management Agency service under section 306(b)(1) of the Robert T. Stafford Disaster Relief and Assistance Act (42 U.S.C. 5149(b)(1)) or to train for such service, and any other category of persons designated by the President in time of war or national emergency.<sup>4</sup>

**Q: What conditions must I meet to have the right to reemployment under USERRA?**

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<sup>4</sup> 38 U.S.C. § 4303(17) (emphasis supplied).

**A:** When you have been away from your civilian job (federal, state, local, or private sector) for a short, intermediate, or long period of uniformed service, you (or any returning service member or veteran) will have the right to reemployment in your pre-service job only if you meet the five USERRA conditions:

- a. You must have left the job to perform service in the uniformed services, as defined by USERRA.<sup>5</sup>
- b. You must have given the employer prior oral or written notice of your impending absence to perform service.<sup>6</sup>
- c. Your cumulative period or periods of uniformed service, related to the employer relationship for which you seek reemployment, must not have exceeded five years.<sup>7</sup>
- d. You served honorably, and you were released from the period of service without having received a disqualifying bad discharge from the uniformed service.<sup>8</sup>
- e. You made a timely application for reemployment with the pre-service employer after release from the period of service.<sup>9</sup>

It seems clear that you left your job for perform service in the uniformed services and that you gave your employer (the county) prior

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<sup>5</sup> 38 U.S.C. § 4312(a).

<sup>6</sup> 38 U.S.C. § 4312(a)(1). No specific amount of advance notice is required, but of course the practical advice is to give the employer as much notice as possible. “No notice is required under subsection (a)(1) if the giving of such notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable.” 38 U.S.C. § 4312(b)(1).

<sup>7</sup> 38 U.S.C. § 4312(c). There are nine exemptions from the five-year limit. That is, there are nine kinds of service that do not count toward exhausting your five-year limit with respect to that employer relationship.

<sup>8</sup> 38 U.S.C. § 4304. Disqualifying bad discharges include punitive discharges, awarded by court martial for serious crimes, and other-than-honorable administrative discharges.

<sup>9</sup> After a period of service of 181 days or more, you have 90 days to apply for reemployment. 38 U.S.C. § 4312(e)(1)(D). Shorter deadlines apply after shorter periods of service. After a period of service that lasted more than 30 days but less than 181 days, you have 14 days to apply for reemployment. 38 U.S.C. § 4312(e)(1)(C).

oral or written notice. This four-month period counts toward your five-year limit with respect to your employer relationship with the county, but it appears that you have most of your five-year limit still available for use. I am sure that you serve honorably and that you will be released from full-time service without a disqualifying bad discharge from the PHS. After your release, you must apply for reemployment with the county within 14 days.

**Q: In my county job, I have a generous pension plan. I contribute to the cost of the plan by payroll deduction each pay period. I pay 30% of the cost of the plan and the county pays the other 70%.**

**I expect to be released from full-time PHS service on 7/31/2026, and I plan to apply for reemployment with the county the very next day. I am confident that I will meet the five USERRA conditions and that I will return to my county job immediately after I am released from this period of PHS service.**

**I want to be treated, for county pension purposes, as if I had remained continuously employed by the county during the four months that I was away from my county job for PHS service. Am I entitled to that under USERRA?**

**A: Yes, if you meet the five USERRA conditions.<sup>10</sup>**

**Q: I inquired at the county's personnel office about returning to work and resuming my participation in the county pension plan in early August, shortly after I return from this period of PHS service. The**

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<sup>10</sup> See 38 U.S.C. § 4318.

county's personnel director told me that I will be welcome to return to work and to resume making contributions to the county pension plan each pay period after I return to work. He also told me that if I want to be treated as continuously employed for the pension plan, I will be required to make up the entire cost of the plan for the pay periods that I missed, *and this includes the 70% share that the county normally pays*. Is it lawful for the county to make me pay the 70% county share?

**A: No.** The pertinent section of USERRA is as follows:

A person reemployed under this chapter shall be entitled to accrued benefits pursuant to subsection (a) that are contingent on the making of, or derived from, employee contributions or elective deferrals (as defined in section 402(g)(3) of the Internal Revenue Code of 1986) only to the extent the person makes payment to the plan with respect to such contributions or deferrals. **No such payment may exceed the amount the person would have been permitted or required to contribute had the person remained continuously employed by the employer throughout the period of service described in subsection (a)(2)(B).** Any payment to the plan described in this paragraph shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the person's service in the uniformed services, such payment period not to exceed five years.<sup>11</sup>

As soon as you return to work in August 2026, you should resume making ongoing payments to the pension plan, for the employee share.

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<sup>11</sup> 38 U.S.C. § 4318(b)(2) (emphasis supplied).

You should also plan with the county to make up the missed employee contributions for the four-month period when you were away from your county job performing PHS service. You need to make up the missed employee contributions within 12 months (three times the period of uniformed service) after you return to work. It is unlawful for the employer to make you pay more than what you would have contributed if you had remained continuously employed or to pay interest on the missed contributions.<sup>12</sup> The make-up contributions, like the regular contributions, should be made by payroll deductions, using pre-tax funds.

**Q: Are the state courts in California required to apply federal laws like USERRA?**

**A:** Yes, because the United States Constitution provides that:

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.<sup>13</sup>

In one of its seminal cases, the United States Supreme Court held that the Supremacy Clause means what it says and that a federal statute trumps a conflicting state statute or even a state constitution.<sup>14</sup> When a

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<sup>12</sup> 20 C.F.R. § 1002.263.

<sup>13</sup> United States Constitution, Article VI, Clause 2. This provision is called the “Supremacy Clause.” Yes, it is capitalized in just that way, in the style of the late 18<sup>th</sup> Century.

<sup>14</sup> *Gibbons v. Ogden*, 22 U.S. 1 (1824).

California law conflicts with a federal statute, the federal statute prevails and preempts the state law.<sup>15</sup>

**Q: How do I enforce USERRA against the county government and the California state agency that administers the public employee retirement system?**

**A:** Please see Law Review 24054 (November 2024).

**Q: What is the relationship between USERRA and state laws and county ordinances?**

**A:** USERRA is a floor and not a ceiling on your rights. The State Legislature in Sacramento or the county governing board can give you greater or additional rights but cannot deprive you of rights conferred by USERRA. The pertinent section of USERRA is as follows:

**(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 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

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<sup>15</sup> See *Cantwell v. County of San Mateo*, 631 F.2d 631 (9<sup>th</sup> Cir. 1980), *cert. denied*, 450 U.S/ 998 (1981). See also Law Review 22038 (May 2022).

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.<sup>16</sup>

**Q: Where can I find a lawyer or law firm that fully understands laws like the Servicemembers Civil Relief Act (SCRA), the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Uniform Code of Military Justice (UCMJ), and other laws that are especially pertinent to those who serve our country in uniform?**

**A:** As of 5/1/2026, I have come out of retirement and have joined Maher Legal Services in an “of counsel” role. This firm has a great team, headed by attorneys John Maher and Kevin Mikolashek, both of whom have served as Army judge advocates for many years. These attorneys and this firm have a great record, and I am proud to join their team.

Here is a link to the Maher Legal Services website:

<https://www.lawyersdefendingwarriors.com/about>.

**Join the Organization That Fights for You.**

This article is one of more than 2,000 "Law Review" articles available at <https://roa.org/lawcenter/> — a free legal resource that the Reserve Organization of America (ROA) has built and maintained since 1997, adding new articles every month.

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<sup>16</sup> 38 U.S.C. § 4302.



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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