



FROM COUNSEL

A Preventive Law Service of The Office of The Judge Advocate General
Keeping You Informed On Personal Legal Affairs

SPECIAL LAWS FOR MOBILIZING RESERVE/NATIONAL GUARD MEMBERS

Two laws offer special protections and benefits for mobilizing Reserve and National Guard members: the Soldiers' and Sailors' Civil Relief Act (SSCRA), Title 50 United States Code App. §§ 501 et seq., and the Uniformed Services Employment & Reemployment Rights Act (USERRA), Title 38, United States Code §§ 4301-4333. Both federal laws give most mobilizing persons some important rights as they enter active duty. Find more information about both on our Legal Services web site: <http://www.jagcnet.army.mil/legal>. A legal assistance attorney can advise you specifically on the usual protections.

SSCRA Highlights:

Pre-active duty financial obligations. When military service hampers your ability to meet certain financial obligations incurred before entering active duty, the SSCRA may help you during your active duty service. For example, the SSCRA may entitle you to get the interest rate on a mortgage loan, credit card, or other debt lowered to 6 percent. The SSCRA allows military members to give notice to terminate leases entered into before coming on active duty effective with 30 days after the next rental payment is due.

After entering active duty, the SSCRA may allow:

- Delay of certain legal actions until the military member is able to return and adequately protect his or her interests. To obtain this protection, the court must be advised of the active-duty commitment and find the military member's participation has been materially affected.
- Prohibition of certain default judgments against active duty military members unless the party filing the action follows specific guidelines in the SSCRA.

In addition, landlords with military tenants also have restrictions. A military member who enters a lease for less than \$1,200 a month cannot be evicted for up to three months without a court order.

What to do? To take advantage of these protections, the military member must request the SSCRA benefits. Consult a legal assistance attorney for advice.

SSCRA Frequently Asked Questions:

1. The Soldiers' and Sailors' Civil Relief Act (SSCRA) is a federal law that gives all service persons some important rights as they enter active duty. This information paper outlines some of those rights and benefits. The information in this paper is for personnel in the Reserve Components who are activated to serve on active duty [and Active Component personnel deployed away from home station].

FROM COUNSEL is one of a series of informative handouts containing general information on topics that legal assistance attorneys frequently advise on. Information provided is general in nature and does not constitute legal advice. Consult an attorney for specific legal advice for your particular situation. FROM COUNSEL is distributed to persons eligible for legal assistance under 10 USC 1044.

2. When does the SSCRA protect me?
- Most SSCRA protection commences on the day you receive your orders to active duty. As a practical matter, you should be ready, and expect to present a copy of those orders to whomever you ask for some right or benefit under the Act.
3. I have heard about 6% loans. How do I get them?
- You may be entitled to have the interest rate on some of your loans reduced to 6% for the time you are on active duty. There are a number of special requirements. You need to talk to a Legal Assistance Attorney to ensure you are eligible. You may be eligible if you and your loan meet the following conditions:
 - a) You took out the loan during a time when you were not on any form of active duty in any branch of the military.
 - b) The interest rate is currently above 6% per year.
 - c) Your military service affects your ability to pay the loan at the regular (pre-service) interest rate. Generally this requirement means that you make less money in the military than you made as a civilian. There are some special legal issues here - you should be ready to talk to your Legal Assistance Attorney about your entire financial situation.
 - d) You notified the lender.
4. What about the lease on my apartment? I live alone and I will not be there. I want to let my apartment go and put my furniture in storage. Can I get out of my lease?
- Generally - yes. If you have a lease for a house, apartment, or even a business location, you may be able to get out of the lease when you come on active duty. Here are the requirements:
 - a) You originally signed your lease when you were not on any form of active duty.
 - b) You have received your orders to active duty.
 - c) You gave written notice to your landlord that you want to terminate your lease. You will still have to pay rent for a short while. Your landlord can charge you rent for 30 days after the date your next rent is due, after the date you give your written notice. Example: You give notice on 15 December. Your next rent is normally due 1 January. The landlord can make you pay rent until 31 January. The key is to get the written notice in the landlord's hands just as soon as possible.
5. I have to go to court on a lawsuit that came up over an auto accident last year. How can I get the lawsuit delayed?
- If you are a party (one of the people suing or being sued) in a civil case (not a criminal case), your commander can ask the judge to stay or temporarily delay the proceedings until you can appear. Generally, your commander will have to show that military duty is keeping you from going to court. This is a tricky legal area - I recommend you have your civilian lawyer contact a Military Legal Assistance Attorney to discuss the best way to proceed in your case.

6. I am self-employed and I have health coverage that is pretty expensive. Can I stop my health coverage? What will happen when I get off of active duty and I try to start it again - will I still be covered?
- As long as you are on active duty, your health care needs are covered by the Military's medical facilities. In addition, your family members will become eligible for coverage. You may want to suspend your civilian coverage. If you do this, the SSCRA will require your civilian insurance company to reinstate your coverage when you get off of active duty. They have to write you a policy. They cannot refuse to cover most "pre-existing conditions."
7. Will I have to pay state income taxes on my pay while I am on active duty?
- If your home state taxes military pay, you will have to pay those taxes. If you get assigned to another state, you will still legally be a "domiciliary" of your home state. The state to which the military assigns you cannot tax your military pay. If you moonlight, they can tax that pay - just your military pay is exempt.

USERRA Highlights:

USERRA ensures that many mobilized Reserve and National Guard members can return to their former civilian jobs at the end of their military service. To obtain the USERRA protections and benefits, inform your civilian employer of your active-duty commitment *before* leaving your civilian position and be away on military service for less than five years. You should usually do so in writing and provide a copy of your military orders. Your employer can find information about USERRA on the web sites mentioned below. You might include a copy of this *From Counsel* or our *From Counsel - Reemployment Rights Act* in your letter to your employer.

USERRA protection applies if you meet all of these tests:

1. **Job.** Did you have a civilian job before you went on active duty? USERRA applies to all private employers, state governments, and the federal government.
2. **Notice.** YOU (OR A RESPONSIBLE OFFICER FROM YOUR MILITARY SERVICE) MUST GIVE ADVANCE NOTICE TO YOUR EMPLOYER THAT YOU ARE LEAVING BEFORE LEAVING FOR ACTIVE DUTY. Notice can be oral or in writing, but written notice is best, and you should retain a copy of the letter. Your legal assistance attorney has a sample letter.
3. **Character of service.** USERRA protections apply if you are discharged with an Honorable or General discharge. You are not protected if your active duty ends with an Other Than Honorable Discharge, a Bad Conduct Discharge, or a Dishonorable Discharge, or you are dropped from the rolls.
4. **Prompt return to work.** If your military service lasted 30 days or less, you must report back to the first shift which begins after safe travel time from your military duty site plus eight hours to rest. If you are on active duty for 31 to 180 days, you must apply in writing for reemployment within 14 days after completing military service. If you were on active duty 181 days or more, you must apply in writing for reemployment within 90 days. Tell your employer that you worked there before, and that you left for military service. Any of these deadlines can be extended for up to two years if you are hospitalized or recovering from a service-connected injury or illness.

Once you return to your civilian employer after active duty, USERRA says that status, seniority, and most pension rights must be reinstated as if you never left. Your employer should reinstate your health benefits. You are also protected from termination other than for just cause for a period of time varying with the length of the active duty commitment.

More USERRA information:

- Mobilizing federal civilian employees will find useful information on the OPM web site: From OPM, <http://www.opm.gov/oca/compmemo/2001/2001-09.htm>, *Rights & Benefits of Reservists Called to Active Duty*. See attachment 1 (<http://www.opm.gov/oca/compmemo/2001/2001-09A.htm>) for an overview of your USERRA-required rights and benefits. Also from the Department of Labor, Small Business *USERRA Handbook*, <http://www.dol.gov/asp/programs/handbook/userra.htm>.
- The National Committee for Employer Support of the Guard and Reserve (ESGR) provides representatives who mediate re-employment issues between former military members and their civilian employers. ESGR can be reached at (800) 336-4590 or (703) 696-1400. In addition, their Web site at <http://www.esgr.org> provides information for mobilizing personnel and for employers. Employers may contact an ESGR ombudsman toll-free at (800) 336-4590. Ombudsmen are trained to provide information and informal mediation services concerning civilian job rights of National Guard and Reserve members. As mediators, they act as neutrals, with a goal of helping bring about solutions to conflicts that are legal and equitable to both parties involved.
- The U.S. Department of Labor Veterans Employment and Training Service is responsible for resolving and/or investigating re-employment issues. They can be reached at (202) 219-9110. Their web site at <http://www.dol.gov/dol/vets>, has a *Nontechnical Resource Guide to USERRA*.

Also, a military legal assistance attorney may have additional information to assist you.

FROM COUNSEL is distributed by the Fort Detrick Office of the Staff Judge Advocate, Legal Assistance Office, located in Building 521 Fraim Street. Our office hours are: 0730-1630. You may call us for an appointment at (301) 619-2221. Check our Legal Services web site, <http://www.jagcnet.army.mil/legal> for other helpful legal information on similar personal legal affairs topics.