

TECHNOLOGY NEWS. RESERVISTS RETURN TO CIVILIAN JOBS. This is from Navy Public Affairs...[Headlines] Legal Protections, From Lt. j.g. Sean M. Spicer, Naval Information Bureau Det 206 Public Affairs..."After the attacks of September 11, 2001, more than 85,000 Reservists were recalled to active duty, including more than 10,000 naval personnel. Most had orders for up to a year but would leave not knowing if they would be away the full year or be back home in months. Now, eleven months later, many of these Reservist are being demobilized and heading home as military requirements have changed. They are welcomed back by families and friends but many are left wondering how their employers will receive their return.

Although many employers look favorably on military service and even encourage it, there are plenty who find it burdensome to have an employee who spends time away from the job. Recalls during times war may not occur often, but almost every Reservist has had to face their employer at one point to discuss fulfilling their military requirements. Aside for active duty call-ups, time off for monthly drills and annual training can be worrisome for employees and employers. Yet, many Reservists, including those who have served for several years, are unaware of their legal rights when it comes to their civilian employment and military service. In order to alleviate concerns, many Reserve Centers have incorporated seminars on this subject into their indoctrination classes. Naval Reserve Capt. Sam Wright of the Judge Advocate General Corps (JAGC), who often speaks at indoctrinations, is one of the leading experts in the area of service members' employment rights. Wright says he often encounters seasoned Sailors who are unaware of their legal rights, just as many employers do not understand their legal obligation. During Wright's presentation, he focuses on the law that protects service members, the Uniformed Services Employment and Reemployment Act (USERRA), which was enacted into law in 1994. It updated a 1940's law, the Veterans Re-Employment Rights Acts, which gives Reservists who leave their civilian jobs certain rights to both perform their military service and ensure their civilian job upon completion of their military service. During a recent indoctrination at Naval Air Facility Washington, Capt. Wright spoke to a group of 30 Naval Reservists, which spanned from non-prior service to senior officers who had recently left active duty. Petty Officer 2nd Class Keith Fykes, who until recently helped coordinate NAF Washington's INDOC classes, said Wright's speech is something that all indoctrination classes should hear. "This is an excellent lecture especially for new Reservists. More than 80 percent of the people probably were surprised at the rights they have." Fykes added that with the recent mobilizations of Reservists, it is important for Sailors and their families to know their rights. Wright said that many employers and even some Reservists are under the false impression that USERRA only covers Reservists who are called to active duty during time of war. However, the law extends to all service, voluntary or involuntary, monthly drills, annual training and active duty for special work (ADSW). USERRA ensures that service members

are promptly reinstated in their civilian jobs and are treated for seniority and pension purposes as if they had never left. Additionally, it prohibits discrimination against those who are serving and those who have served. Just as a potential employer is barred from asking a young woman if she intends on having children, USERRA provides that employers cannot discriminate because of an employee's intent to either join or stay in military service. Many U.S. Department of Labor regulations governing employment practices only apply at thresholds determined by the number of employees, but with USERRA there is no threshold. Whether the company is a Fortune 500 company with thousands of employees or a small business with two employees, USERRA is applicable. The law even extends to those who work in areas like construction and are employed through what is referred to as a "hiring hall" or similar operation. While USERRA guarantees an employee's job will be waiting for them when they return from service, it does not mean their civilian employer will pay them during their absence. The federal government, many states and a growing list of businesses provide for 15 days of paid leave to those that serve but many companies, large and small, require employees to go on unpaid leave while serving. USERRA offers a great deal of protection for those who chose to serve in the Reserves but there are some basic eligibility requirements that must be met. First, the person must hold a position of employment and must leave that position for military service. Second, they must give either written or oral notice to the employer. Although it is not required to "ask permission" or give advance notice, Capt. Wright suggested that working with your employer to provide for a smooth transition is a good way to promote healthy employer-employee relations. Last, they must be released from service under honorable conditions and not serve more than five years before returning to work. When the employee returns it must be done in a "timely" fashion after being released from service.

If the length of service was less than 31 days (annual training, monthly drill, etc.) you must report back for the next full day of work. The law does provide that you have eight hours of rest after you have safely returned back to home. For example, a Reservist on a drill weekend who ends their Sunday drill at 1600 hours but has to drive home seven hours arriving back home at 2300 hours, has eight hours from that time to report back to work. In this instance though, if the Reservist worked an early morning shift, they would not be required to report, but it is equally important to note that while the employer must abide by the law, they do not have to pay employees for shifts or days not worked. If the service was between 31 and 180 days, you must return to work within 14 days. And for those who serve more than 180 days, they must report back within 90 days. In any case where the service is more than 31 days, the employer has a right to see documentation. None of these requirements prevent the employee from returning early if it is agreeable to the employer. The employer must make "prompt" reinstatement but this does not necessarily mean the day after they

are informed you are returning. They do have an opportunity to make the

appropriate adjustments within a reasonable amount of time. There are of course some exceptions when employers are not required to re-employ a person. For example, a company that has downsized from 1,000 to 100 employees while the service member was gone, can deny re-employment if they can prove that the position was cut or discontinued on a basis other than seniority. In these rare cases, the burden of proof is on the employer.

Employers cannot fill the position and then claim it is no longer available. After returning from active service, USERRA provides many entitlements. The most important benefit is that employers must make appropriate training available upon return. Another major aspect of the law is that employers must treat employees who are serving as if they never left in terms of seniority, pension and status. If the company operates at all on a seniority system, then employees are entitled to pay raises, benefits and promotions that would have been received had they never left. If military service was less than 91 days, employees are entitled to the exact same job upon returning. But if it was more than 91 days, employers can put the employee in a job that is equal in status but different from the exact one previously held. Interestingly, the law also treats location as an aspect of status, meaning that they cannot unreasonably offer the "same position" but in a different location. USERRA also protects returning service members from being fired upon their return from active duty. If the active duty service is less than 31 days, there is no specific protection. But if the service was more than 31 days but less than 180 days, you are protected for 180 days against arbitrary dismissal except for just cause. If the service extends beyond 180 days (up to the five year limit), the law protects you for one year against unreasonable dismissal. The Veterans' Employment and Training Service in the U.S. Department of Labor, which oversees and investigates complaints and violations, handle enforcement of USERRA. A list of agents who can initiate and investigation can be found on the agency's Web site at www.dol.gov/dol.vets. Additionally, an organization within the Department of Defense called the National Committee for Employer Support of the Guard and Reserve (www.esgr.org or 1-800-336-4590) works with employers and Reservists to both resolve disputes and promote a stronger relationship between employers and the military.

Captain Wright has published numerous articles on the subject of employment rights which can be found on the Web site of the Reserve Officers Association, www.roa.org. After hearing Capt. Wright's presentation, everyone agreed it gave them a clearer understanding of their rights. Jennifer Perkins, a non-prior service enlistee from Willington, Del., said she knew her civilian employer had to legally allow her to serve but was pleasantly surprised to hear Wright describe all of the available rights. "Knowing about these rights makes it more likely for people to serve and that their job will be there when they get back," she said. Lt. Cmdr Mike Christman, a helicopter pilot who served 10 years on active duty and three

in the Reserves, believes that after the attacks of last September 11, many more people will want to serve. Knowing they can do so and keep their

civilian job makes it easier. "You can satisfy your patriotic duty and be assured you have your job when it is over," he said." Link:

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