

# Military Law for Non-Military Attorneys

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It may come as a surprise to many practitioners that the law of the military is far more expansive than just courts-martial, and it isn't just for those in uniform. Many types of matters in which non-military attorneys may be well-versed can be significantly affected in unexpected ways when one party is a current, former or even potential servicemember. The ability to identify when these issues arise and understand how they affect a legal proceeding can be critical to success. Below is a sampling of how military laws can weave their way into a variety of civilian matters and an overview of issues to consider when they do.

## Employment Law

The Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. §§ 4301 through 4335 and 20 C.F.R. Part 1002, prohibits employers from discriminating against members of the military. Under USERRA, employers may not deny employment, retention or "any benefit of employment" if military service is a "motivating factor" in the employer's decision. N.R.S. § 412.606 specifically prohibits discrimination against members of the Nevada National Guard.

When military obligations cause servicemembers to be absent from work, USERRA requires employers to reinstate, and possibly re-train, the servicemember into the same or similar position of

employment with like seniority, rights, benefits and pay as if the servicemember had not been absent. Once re-employed, USERRA provides that the employee may only be fired for cause for up to one year if the absence was for more than 30 days. N.R.S. §§ 412.139 through 1395 similarly prohibits terminating an employee who is a member of the National Guard because of military obligations. USERRA also has a variety of other protections for the employee servicemember regarding health insurance, pension benefits, the use of vacation time or leave while absent, and other protections.

## Civil Litigation

The Servicemembers Civil Relief Act (SCRA) 50 USC §§ 3901 through 4043, affects civil actions involving servicemembers by providing for stays, protections from default judgments, tolled statutes of limitations, and waivers of penalties incurred during military service. The SCRA applies to members of the Army, Navy, Air Force, Marine Corps, Space Force, Coast Guard, National Guard, commissioned corps of the National Oceanic and Atmospheric Administration, and commissioned corps of the Public Health Service. It applies in state and federal courts, and in "any judicial or administrative proceeding commenced in any court or agency in any jurisdiction subject to this Act." Most of the SCRA protections apply when a servicemember's military service materially affects their ability to appear, defend, pay or perform.

## Family Law

The Uniformed Services Spouses Protection Act (10 U.S.C. § 1408) (USSPA) and Nevada cases interpreting it,<sup>1</sup> can affect military benefits after divorce. These include retirement income,

disability benefits, health and dental care, and the ability to shop at the exchanges and commissaries (i.e., stores and groceries) on military installations. The range of issues under the USSPA are too numerous to address here, and an attorney handling a divorce proceeding involving a servicemember should carefully consult the USSPA.

The SCRA also provides for a stay in family law and child custody proceedings for individuals currently in military service or within 90 days thereafter. The SCRA also provides limitations regarding child custody orders and deployments. For example, if a petition is filed seeking a permanent child custody order, the court may not consider absence due to deployment, or the possibility of deployment, as the sole factor in determining the best interest of the child.

## Landlord Tenant

The SCRA allows servicemembers to terminate leases at their option at any time after they enter military service. They can also terminate contracts for telephone, television and internet at any time after receiving military orders to relocate. The servicemember's landlord, on the other hand, cannot terminate a lease for a breach occurring before or during the military service without a court order if the servicemember has paid a deposit or rent. The landlord also cannot evict a servicemember from his or her residence during a period of military service without a court order. The limitation on eviction, however, only applies if rent on the property does not exceed a certain amount (currently \$3,991.90).

## Contracts

The SCRA allows servicemembers to terminate leases for vehicles at their option any time after they enter



military service. In the case of any other obligation, liability, tax or assessment, the SCRA provides that a court may grant a stay of enforcement during the servicemember's military service and for a limited period thereafter. The SCRA also waives any fines or penalties during the stay.

If the servicemember paid a deposit or made an installment payment for the purchase or lease of real or personal property (including vehicles) before entering military service, the contract cannot be terminated due to a breach occurring before or during the military service, and the property cannot be repossessed without a court order. These protections regarding leases and contracts can also be extended to a servicemember's dependents.

### **Mining and Minerals**

The SCRA provides that the rights of a servicemember to federal lands obtained before military service under the federal mining and mineral leasing laws shall not be forfeited or prejudiced as a result of being absent from the land, or by failing to begin or complete any work or improvements to the land, during the period of military service. It also eliminates the annual requirement of \$100 worth of labor or improvements for claims without patents, and it provides protection from forfeiture of mining claims due to nonperformance of annual assessments, during the period of military service and for 180 days thereafter, or for any period of hospitalization or rehabilitation. For mineral permits and leases, it provides

that a person holding a permit or lease on the public domain under the federal mineral leasing laws who enters military service may suspend all operations under the permit or lease for the duration of military service and for 180 days thereafter. There is also a provision that provides that any servicemember under the age of 21 shall be entitled to the same rights under the federal mining and mineral leasing laws as servicemembers who are 21 years of age.

### **Rural Areas**

The SCRA has provisions specific to grazing rights and desert-land entry claims. It provides that a servicemember with a permit or license to use federal grazing districts may suspend the permit or license for the period of military service and for 180 days thereafter. The desert-land entry cannot be contested or cancelled: 1) for failure to effect the reclamation of the claim during the same period; 2) for failure to expend any required amount per acre per year in improvements upon the claim; or 3) during any period of hospitalization or rehabilitation due to an injury or disability incurred in the line of duty.

### **Tax Law**

The SCRA provides for a deferral of income tax during military service and for 180 days thereafter if a servicemember's ability to pay the tax is materially affected by the military service. It also provides that no interest or penalty shall accrue for the period of deferment because of nonpayment of the tax. The statute of

limitations against the collection of tax deferred under this section, by seizure or otherwise, is also suspended for the period of military service and for 270 days thereafter. The SCRA also contains other provisions and protections relating to domicile, residency, the spouse's income, personal property taxes, redemption of real property, and other issues relating to the taxes of servicemembers and their spouses.

### **Education**

The Higher Education Opportunity Act, 2008, 20 U.S.C. § 1091c, provides re-admission rights for servicemembers whose absence from an institution of higher education was caused by military service, provided that the servicemember gave advance notice of the absence, timely submitted a notice of intent to re-enroll and the cumulative length of the absence did not exceed five years. The servicemember has three years after completion of the military service, or two years after recovery from a duty-related injury, to re-admission. 34 C.F.R. § 668.18 further provides that the tuition must be the same as when the servicemember left (unless military benefits will pay the increase) and the institution must make reasonable efforts at no extra cost to prepare the servicemember for re-enrollment, including providing refresher courses.

### **Consumer Lending**

The Military Lending Act, 10 USC § 987 and 32 C.F.R. Part 232, provides a variety of protections for servicemembers and their dependents. It prohibits interest greater than 36 percent on consumer credit such as payday loans, title loans and tax refund loans. It also prohibits mandatory arbitration clauses, prepayment penalties, unreasonable pre-litigation notice requirements and other lending practices. The SCRA caps interest rates at 6 percent during periods of military service for obligations incurred by servicemembers, including credit card debt and car loans. For mortgages, the cap applies during the period of military service and for one year thereafter. During the applicable periods, interest that exceeds 6 percent is forgiven, and

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periodic payments on the debt are reduced by the amount of interest forgiven. The SCRA also restricts residential foreclosures during periods of military service and for 90 days thereafter, and allows a court to “adjust the obligation to preserve the interests of all parties.”

## Criminal Law

Under N.R.S. § 412.139, it is a misdemeanor for any employer to unlawfully terminate a member of Nevada’s National Guard. Under N.R.S. § 412.606, it is a misdemeanor to discriminate against a member of Nevada’s National Guard. Under the SCRA, it is a misdemeanor to violate many of its provisions.

These are only some of the many military laws that can affect the practice of non-military attorneys. Among other things, military law affects non-military life insurance, storage liens, health insurance, professional liability insurance, residency for voting and business registrations, and temporary law practice certification for military spouses relocated to Nevada. Attorneys with matters involving servicemembers should make sure to consider these issues carefully.

## ENDNOTES:

1. *Shelton v. Shelton*, 78 P.3d 507, 119 Nev. 492 (2003).

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practices in the areas of civil litigation and real estate. He also serves as a judge advocate (JAG) for the Nevada Army National Guard. He is a graduate of the Army Air Assault School and has traveled to the Kingdom of Tonga to teach military law to members of the Tongan military. In 2018, he was named Trial Defense Attorney of the Year for the Pacific Region.



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