



May 20, 1999

ASVET MEMORANDUM NO. 5-99

MEMORANDUM FOR: REGIONAL ADMINISTRATORS AND DIRECTORS FOR
VETERANS' EMPLOYMENT AND TRAINING

FROM: 
ESPIRIDION (AL) BORREGO

SUBJECT: Allowable Time Off from Employment Prior to Service in the
Uniformed Services

PURPOSE: To convey the agency position on the amount of time off an employer should provide an employee prior to performance of service in a uniformed service. While this policy has a broad application, the most common instance where the question arises is concerning the time between release from work and the start of weekend National Guard or Reserve inactive duty training periods (drills).

BACKGROUND: Neither the Uniformed Services Employment and Reemployment Rights Act (USERRA) nor the predecessor Veterans' Reemployment Rights Act (VRRRA) specifies the amount of time off prior to military service an individual be granted by an employer, although both address the question of the time following periods of military service that a person is to be allowed before reporting back to work. The VRRRA specified the person was to report back to work (following training duty) at the next shift on the day following completion of military service plus safe travel back home. USERRA uses this general formula for return to work following a short period of military duty (less than 31 days), but adds an eight-hour rest period.

Since at least 1977, the Office of Veterans' Reemployment Rights (now the Division of Compliance), after receiving advice from the Office of the Solicitor, has taken a consistent position regarding allowable time off before service. This position relies on statements by Senator Richard Russell during the 1958 hearings on the original amendment to the VRRRA concerning reporting back to work the next day. These statements demonstrate that Congress intended that an employer must reasonably accommodate the employee as to allowable time off to perform military service.

Both the House and Senate Committee reports that accompanied USERRA made it clear that Congress intended that an individual be allowed time for safe travel and needed rest before returning to work following completion of short periods of military service. This memorandum applies the principles set forth in those Congressional reports to the period between being released from work by the employer and the commencement of the military duty. A person should report to either military service or a civilian workplace fit to perform his or her assigned duties safely.

VETS believes that the interests of all concerned, especially employers, are best served by avoiding legislation to address this issue. Any such legislation would most likely mirror the requirement for rest and travel time allowed before returning to the civilian job following short periods of military service. In some cases, this would put an undue burden on employers. For example, it is fairly common for certain key members of Reserve or National Guard units to meet (in an official paid drill status) on the Friday evening before a weekend drill to plan activities. A typical arrangement in such cases is for the employee to be released from work with only enough time to change into a military uniform and travel to the Reserve meeting. If allowable time off were legislated, it is conceivable that an employer would have to excuse such an individual from work all day Friday in order to accommodate the Reserve meeting. That would burden the employer with a requirement that neither the employer nor most employees would really want.

On the other hand, an employee generally needs to be given more time off than just travel time prior to reporting to perform military service. For example, it would not be reasonable or safe to have a Reserve physician released at 7 o'clock Saturday morning from a 24-hour hospital shift to drive straight to a drill and begin performing medical services at the Reserve unit an hour later.

POLICY: VETS policy is that an employee be afforded enough time off from the employer prior to starting military duty in order to travel to the duty location and arrive fit to perform the military service. How much time this is should be determined on a case-by-case basis. Such factors as the nature of the civilian job, the nature of the military duty to be performed, travel time, and other factors should be considered in arriving at an answer for a particular situation. In most cases, it will be more than simply travel time.

When disputes arise on this issue, employer, employee, and the military command involved should work together to arrive at a compromise. VETS staff should offer to assist in mediating solutions that will best serve the interests of all parties involved.

ACTION: Disseminate this information in contacts with protected persons, employers, and Employer Support of the Guard and Reserve (ESGR) State ombudsmen and committee members. This policy will be restated in a permanent form in the USERRA Handbook.

Attempt to informally mediate disputes that are brought to your attention. Involve Guard and Reserve commanders and/or ESGR resources where appropriate. Point out to the employer the benefit of a compromise solution compared to a legislative remedy, which would likely involve more time off than the proposed compromise. If resolution cannot be reached at the local level, seek assistance from the regional office.

INQUIRIES: Questions should be directed to Nick Dawson (202) 219-8611. That number will change in June to (202) 693-4701.

EXPIRATION DATE: None