

# Contra Costa County Veterans Service Office

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## Re-Employment Rights and the Soldiers' and Sailors' Civil Relief Act (SSCRA)

### RE-EMPLOYMENT

Members of the National Guard and Reserves activated for Federal Duty -- their civilian careers and activities interrupted -- are provided protection and rights to offset the hardships imposed by the sudden and unscheduled call to active duty. The Soldiers' and Sailors' Civil Relief Act (SSCRA), the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Fair Credit Reporting Act (FCRA) offer economic, employment and legal protection for those answering the call to federal duty, and for their families. In most cases, these rights and protections **are not automatic**. You must request that they be granted. The following information is designed to help you understand your rights under these laws and help you obtain assistance.

### UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)

The Uniformed Services Employment and Reemployment Rights Act applies to all employers, regardless of the size of the business or organization. It protects the job and benefits, for up to five years (or more in some cases), of a service member who must leave his or her civilian job because of military orders to report for training or active duty -- voluntary or involuntary -- in peacetime or wartime. You are entitled to return to your civilian job and receive pay raises, promotions, pension credit and other seniority benefits as if you had been continually employed, provided certain eligibility criteria are met. If you are unable to settle a disputed reemployment case, the U.S. Attorney may provide you with legal representation at no cost, and on a priority hearing basis. Contact the U.S. Department of Labor at (213) 894-5200 [Los Angeles] or (202) 219-5000 [Washington DC] USERRA requires service members, or a responsible representative of the military unit, to provide advance written or verbal notice to their employers for all military duty unless giving notice is impossible, unreasonable, or precluded by military necessity.

#### Protection under the USERRA applies if:

- The job the person left was for more than a brief, non-recurrent period, with no reasonable expectation that such employment would continue indefinitely or for a significant period.
- You left this job for the purpose of entering active duty.
- You are discharged under honorable conditions.

AND • You apply for reemployment within the applicable time limit.

**If these criteria are met, the USERRA provides the following protections:**

- You are entitled to your "old" job back with the same seniority, benefits, pay, and, additionally, any promotion or raise which you could have reasonably expected if you had remained continuously on your civilian job.
- Your employer is required to offer disabled veterans the "nearest approximation" of the job the service member could have reasonably expected with continuous employment.
- You are protected from being discharged by your employer for a certain time period following your active duty, unless the employer can prove misconduct. The protected time period varies according to the time served on active duty.
- Other rules apply for call-ups for training only. Consult the U.S. Department of Labor at (213) 894-5200 [Los Angeles] or (202) 219-5000 [Washington DC] or your local military legal officer.

**GUARANTEED STUDENT LOANS (GSLs)**

Under federal law, guaranteed student loans are not eligible for the 6% interest reduction under the SSCRA. However, you may apply to the lender for an "emergency forbearance" that would permit a temporary suspension of payments, an extension of the payment schedule or a reduction in the monthly payment. This may be authorized by telephone for up to six months or by written agreement with the lender for more than six months. Military deferments of student loans also are available to active duty members of the armed forces. Application for a deferment should be made to the lender and include documentation of active duty status such as a copy of military orders. With a deferment, GSL principal payments are deferred during active duty while interest continues to accrue.

**FAIR CREDIT REPORTING ACT (FCRA)**

Consumers, regardless of their military status are afforded certain protection under the provisions of the Fair Credit Reporting Act. The act protects you and the information in your credit file. You have a right to the information in your credit file and the right to challenge the accuracy or completeness of the data. If a delinquency is reported to your file, it may be helpful to request that the statement "the delinquency resulted from being called to active duty" be included in your file to the credit bureau.

**OTHER FINANCIAL AND LEGAL CONSIDERATIONS FOR THOSE CALLED TO ACTIVE DUTY**

**FAMILY FINANCES**

Loans and other credit obligations that are the responsibility of a nonmilitary spouse are not covered by the provisions of the SSCRA. However, creditors often will work with you to reduce or defer payments because of the change in family financial circumstances due to active military duty. If you have difficulty meeting these obligations, contact the creditor to negotiate a payment plan. Consumer credit counseling services are available through nonprofit centers located in many cities. To find a center near you, contact the National Foundation for Consumer Credit, Inc. at 1-800-388-2227.

**POWER OF ATTORNEY**

A "power of attorney" is a written document authorizing a particular person to sign for you in making certain financial and property decisions on your behalf. The person whom you designate may be your spouse, parent, other relative or close friend. The person you give this power to should be someone you trust to act in your best interest and to carry out your wishes during your absence. A lawyer should assist you in drawing up the power of attorney document.

## **WILLS**

The primary reason you should have a will is to ensure that your property is left to those you care about in proportions you choose in the event of your death. In a will you name an executor who administers your estate. Making a plan that protects your family and distributes your property according to your wishes requires knowledge and expert advice. To have a will drawn it is important to consult an attorney. If you do not have an attorney, you may obtain assistance through your local military lawyer, the California State Bar Association Lawyer Referral and Information Service or the local bar association in your community.

## **OTHER PRACTICAL SUGGESTIONS**

- Notify your creditors, mortgage holder, landlord and/or employer of the deployment to active military duty.
- Put ALL legal communications in writing and make copies.
- Send correspondence and papers by certified mail whenever possible.
- Leave original documents (such as powers of attorney, mortgages, wills, and military orders) with a responsible person or in a safe deposit box that your spouse or other family member has access to.
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## **RESOURCES AND ASSISTANCE**

Legal and non-legal assistance is available to active duty personnel, military reservists and their families from a variety of sources. Many problems can be solved by the military unit, the military unit legal office, or another office of the U.S. government. If you think you have a legal problem, your local bar association lawyer referral service may be able to assist you. In many areas of the State, local bar associations are sponsoring programs to assist active duty military personnel and their families. These programs include referrals to volunteer attorneys, legal clinics and speakers willing to make presentations to military family support groups.

In addition, the Judge Advocate General's (JAG) office serving the military unit that has been deployed has services available to assist you. To locate the JAG office near you contact:

AIR FORCE 1-703-697-0413

ARMY 1-703-697-3170

NAVY 1-703-325-7928

## **SOLDIERS' AND SAILORS' CIVIL RELIEF ACT**

[Title 50 United States Code]

The Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), as amended, was passed by Congress to provide protection for individuals entering or called to active duty in the military service. Reservists and the members of the National Guard are protected under the SSCRA while on active duty. The protection begins with the date of entering active duty and generally terminates within 30 to 90 days after the date of discharge from active duty. This fact sheet discusses areas of concern to reservists and members of the National Guard entering active duty.

## **TERMINATION OF LEASES**

1. A lease covering premises occupied for dwelling, professional, business, agricultural or similar purposes may be terminated by a service member if the following two conditions are met:
  - (a) The lease was executed by the member before he or she entered active duty, and
  - (b) The leased premises have been occupied for the above purposes by the member or his/her dependents.
2. To terminate the lease, the member must deliver written notice to the landlord at any time after entry on active duty or receipt of orders for active duty. Oral notice is not sufficient. The effective date of termination is determined as follows:
  - (a) For month to month rentals, the termination becomes effective 30 days after the first date on which the next rental payment is due subsequent to the date when the notice of termination is delivered. For example, if the rent is due on the first day of each month, and notice is mailed on 1 August, then the next rental payment is due and payable on 1 September. Thirty days after that date would be 1 October, the effective date of termination.
  - (b) For all other leases, termination becomes effective on the last day of the month following the month in which proper notice is delivered. For example, if the lease requires a yearly rental and proper notice of termination is given on 20 July, the effective date of termination would be 31 August.
3. The servicemember is required to pay rent for only those months before the lease is terminated. If rent has been paid in advance, the landlord must prorate and refund the unearned portion. If a security deposit was required, it must be returned to the servicemember upon termination of the lease.

## **INSTALLMENT CONTRACTS AND MORTGAGE FORECLOSURES**

1. A servicemember who, prior to entry into active duty, entered an installment contract for the purchase of real personal property, will be protected under the SSCRA if the servicemember's ability to make the payments is materially affected by the service.
  - (a) The servicemember must have paid, prior to entry into active duty, a deposit or installment under the contract.
  - (b) The vendor is then prohibited from exercising any right or option under the contract to rescind or terminate the contract, to resume possession of the property for nonpayment of any installment due, or to breach the terms of the contract, unless authorized by the court.
  - (c) "Material effect" is determined by the court, which must compare the servicemember's financial condition prior to entry to active duty with the financial condition while on active duty.
2. The SSCRA protects servicemember against foreclosures of mortgages, as long as the following facts are established:
  - (a) The relief is sought on an obligation secured by a mortgage, trust deed, or other security in the nature of a mortgage on either real or personal property;
  - (b) The obligation originated prior to entry on active duty;
  - (c) The property was owned by the servicemember or family member prior to entry on active duty;
  - (d) The property is still owned by the servicemember or family member at the time relief is sought.
  - (e) The ability to meet the financial obligation is materially effected by the servicemember's active duty obligation.

## **JUDICIAL PROCEEDINGS**

A service member who is involved in judicial proceedings as either a plaintiff or defendant, is entitled to a stay of those proceedings if it is determined that the service member's ability to prosecute an action or defend an action is "materially affected" by reason of his/her active duty service.

1. A service member may request a stay of proceedings during the period of active duty or within 60 days thereafter.
2. "Material effect" is usually shown when the soldier can prove that military duties prevent him/her from appearing in court at the designated time. However, courts require service member to be diligent in their attempts to appear in court, and will be reluctant to grant long-term stays of proceedings.

## **MAXIMUM RATE OF INTEREST**

1. The maximum rate of interest (including service charges) on debts incurred by soldiers prior to entering active duty is six percent per year during the period of active duty. This applies to all financial obligations and liabilities, including home mortgages, credit card debts, and automobile loans.
2. This protection will end if the creditor convinces the court that the soldier's ability to pay a greater amount of interest is not materially affected by the military service.

## **HOME EVICTIONS**

1. A landlord may not evict a soldier's family from their home while the soldier is on active duty or has received orders to report for active duty, if the rent does not exceed \$150.00 per month without obtaining a court order authorizing the eviction.
2. The judge hearing the case must determine whether the soldier's military service has materially effected his or her ability to pay the rent. If the court determines material effect, the judge may stay the eviction proceedings for no longer than three months.
3. This protection applies regardless of whether the dwelling was rented before or after entry on active duty.
4. Although \$150.00 is a small rental payment today, there is at least one case in which the court adjusted the \$150.00 for inflation occurring since 1966, when the cap was raised from \$80.00 to \$150.00.