



LOUISIANA NATIONAL GUARD

PROTECT WHAT MATTERSSM

SERVICEMEMBERS LEGAL ISSUES

2022 Legislative Legal Seminar

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Purpose

- ▶ To increase understanding by the non-military legal community of the legal issues which face today's Servicemembers
- ▶ To help attorneys understand their clients' legal obligations to employees who serve in the military



Common Legal Issues and Resources Available to Servicemembers (“SMs”)



SM Legal Issues

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- ▶ Family/Divorce/Custody
- ▶ Wills/POAs
- ▶ Financial/Debt
- ▶ Housing
- ▶ Civilian Criminal Issues



We are like everyone else

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- ▶ Soldiers, Sailors, Airmen, Marines are like everyone else. They:
 - ▶ Get married
 - ▶ Rent/buy homes
 - ▶ Acquire “stuff”
 - ▶ Have kids
 - ▶ Need wills and trusts
 - ▶ Get divorced
 - ▶ Commit misconduct



Deployments Amplify Problems

- ▶ Communication is difficult
- ▶ The bills do not stop coming
- ▶ Legal issues take time to settle/complete
- ▶ The SM has a million things to do prior to leaving
- ▶ STRESS!!!
- ▶ Relationships are strained and tested
- ▶ Misconduct – Civilian/Military



Legal Assistance

- ▶ Army Regulation 27-3/Air Force Inst. 51-304/Navy JAGINST 5801.2B
- ▶ Support/Sustain military readiness and effectiveness and SM morale and welfare
- ▶ Provided to Active SMs, including ARNG and ANG, and retirees, depending on resource availability
- ▶ SMs must be prepared for immediate mobilization and deployment – Soldier Readiness Program



Legal Assistance

▶ Types of Services:

- ▶ Ministerial Services – Notary
- ▶ Legal counseling
- ▶ Legal correspondence
- ▶ Legal negotiation
- ▶ Legal document preparation and filing
- ▶ Pro se assistance
- ▶ Very limited in-court representation
- ▶ ADR
- ▶ Legal Referrals

▶ Types of Cases:

- ▶ Family Law
- ▶ Estate planning
- ▶ Real property
- ▶ Consumer transactions
- ▶ Civilian administrative
- ▶ Military administrative
- ▶ Torts
- ▶ Taxes



Legal Assistance Limitations

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- ▶ Limited by Scope of the Legal Assistance Program
- ▶ Not included:
 - ▶ Military Justice Matters
 - ▶ Victim/Witness Assistance
 - ▶ Private Business Activities
 - ▶ Litigation against the U.S.
 - ▶ Employment matters
 - ▶ Disability issues
- ▶ Limited by the capabilities of the Legal Assistance Attorney
- ▶ Limited by the availability of counsel



Legal Protections for Servicemembers



Servicemembers Civil Relief Act (“SCRA”) – 50 U.S.C. 3901, et seq.

- ▶ Strengthens the national defense through protection of SMs to enable them to devote their energy to defense of U.S.
- ▶ Provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the rights of SMs during their military service.



Basic SCRA Provisions

- ▶ Prevention of default judgments
- ▶ Stay of civil court proceedings
- ▶ Eviction and foreclosure protection
- ▶ Early termination of certain leases and contracts
- ▶ Six percent interest rate cap
- ▶ Suspension of Statutes of Limitation



SCRA – Child Custody Protection

- ▶ If court renders temporary custody order based on deployment, court shall require order to expire NLT the period justified by deployment
- ▶ Court may not consider the deployment absence of SM as sole factor to determine best interest of the child
- ▶ If State law has greater protections for SM parent in child custody proceedings, then court should apply the higher State standard



SCRA – Tax Provisions

- ▶ Personal or real property of SM shall not be sold during military service to enforce collection of taxes except by court order and determination that military service does not materially affect the SM's ability to pay
- ▶ Collection of SM's Federal, state, or local income tax shall be deferred for a period of 180 days after release from military service
 - ▶ No interest or penalty shall accrue during deferment
 - ▶ Does not apply to FICA tax



SCRA – Other Protections

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- ▶ Termination of Telephone, Video, and Internet contracts.
- ▶ SM does not lose domicile for tax or voting purposes solely by reason of compliance with military orders.
- ▶ Professional liability insurance policies shall be suspended by insurance carrier upon written request by SM.
- ▶ Reinstatement of health insurance coverage.
- ▶ Non-business assets of SM may not be used, during military service, to satisfy business debts for which SM is personally liable.



R.S. 9:3261 – Termination of Residential Leases

- ▶ SM may terminate lease if he/she:
 - ▶ Receives initial or permanent change of state orders to depart more than 35 miles away
 - ▶ Receives initial or temporary duty orders in excess of 3 months to depart more than 35 miles away
 - ▶ Is discharged, released, or retires
 - ▶ Is ordered to reside in government-supplied quarters
 - ▶ Is injured incidental to military service and is hospitalized for more than 15 days



Military Power of Attorney

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- ▶ 10 U.S.C. 1044b and R.S. 9:3861, et seq.
- ▶ Provides a suggested form for use by military personnel who reside in Louisiana
- ▶ Under 1044b, Military POA is exempt from any requirement of form, substance, formality or recording that is required for POAs under the law of Louisiana or any other state
- ▶ If you use the form provided in R.S. 9:3862, then the POA will comply with 10 U.S.C. 1044b



Uniformed Services Employment and Reemployment Act ("USERRA") - 38 U.S.C. 4310, et seq.

- ▶ Encourages noncareer service in the Uniformed Services by eliminating or minimizing disadvantages to civilian careers and employment
- ▶ Prohibits discrimination against SMs due to service
- ▶ Supersedes any Federal or State law that reduces, limits or eliminates any right or benefit provided by USERRA.



USERRA Servicemembers?

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- ▶ Who are members of the “Uniformed Services”:
 - ▶ U.S. Armed Forces
 - ▶ Army National Guard and Air National Guard when engaged in active duty for training, drill, full-time NG duty, and certain periods of State Active Duty
- ▶ But not if SM is separated from Service with a Dishonorable, Bad Conduct, or Other Than Honorable Discharge or is dismissed or dropped from the rolls under 10 U.S.C. 1161.



USERRA Employers

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- ▶ Private employers.
- ▶ Federal government.
- ▶ State and local governments.
- ▶ U.S. Employers operating overseas (unless compliance would violate the law of the country where the workplace is located).
- ▶ Foreign employers operating within the U.S.



USERRA Discrimination Protections

- ▶ SM shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment because of military service or application for military service.
- ▶ An employer may not discriminate in employment against SM or take any adverse employment action against SM exercising his/her USERRA rights.



USERRA Protections - Reemployment

- ▶ Requires reemployment of SM returning from active duty.
- ▶ Return at same pay (incl. normal increases), seniority, or other benefits SM would have received.
- ▶ Provide skills training required for re-employment.
- ▶ Reasonable accommodations to disabled veterans.
- ▶ Continuation of Employer-sponsored Health Care.



USERRA Protections – Reemployment

- ▶ Employer not required to reemploy if:
 - ▶ Changed circumstances make reemployment impossible or unreasonable;
 - ▶ Impose undue hardship on the employer; or
 - ▶ Original employment was for a brief, nonrecurrent period and there was no reasonable expectation that employment would continue indefinitely or for a significant period.



Reemployment Notice

- ▶ Requirements to obtain reemployment rights:
 - ▶ Notice of service to employer.
 - ▶ Cumulative length of absence and all previous absences from employment with *that* employer cannot exceed 5 years (several exceptions).
 - ▶ SM reports to, or submits application for reemployment to, employer.
- ▶ Detailed rules on the type of reemployment position to which a SM is entitled
- ▶ SM must be qualified to perform duties of the position or will be qualified to perform duties with reasonable training provided by employer.



USERRA – Seniority and other Rights - 38 U.S.C. 4316

- ▶ Seniority rights and benefits determined by seniority that SM had on the date of commencement of military service.
- ▶ Entitled to additional seniority and rights and benefits SM would have attained if SM had remained continuously employed.
- ▶ Deemed to be on furlough or leave.
- ▶ Entitled to other non-seniority rights and benefits as are generally provided by the employer while on furlough or leave.



ESGR



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- ▶ DOD Agency - Promotes public and private understanding of the NG and Reserve to gain employer and community support.
- ▶ Community-based volunteer network – 4,500 strong.
- ▶ ESGR Ombudsman Services Program
 - ▶ Helps resolve employer-employee USERRA conflicts.
 - ▶ Provides information, informal mediation, and referral to U.S. Dept. of Labor for formal investigation.
 - ▶ Not an enforcement agency nor does it provide legal advice.



La. Military Service Relief Act (“MSRA”) – La. R.S. 29:401, et seq.

- ▶ Prevent veterans from being disadvantaged and prohibit discrimination against SMs because of uniformed service upon return to civilian life
- ▶ “It is the sense of the legislature that the state of Louisiana shall be a model employer in carrying out the provisions of this Part.”



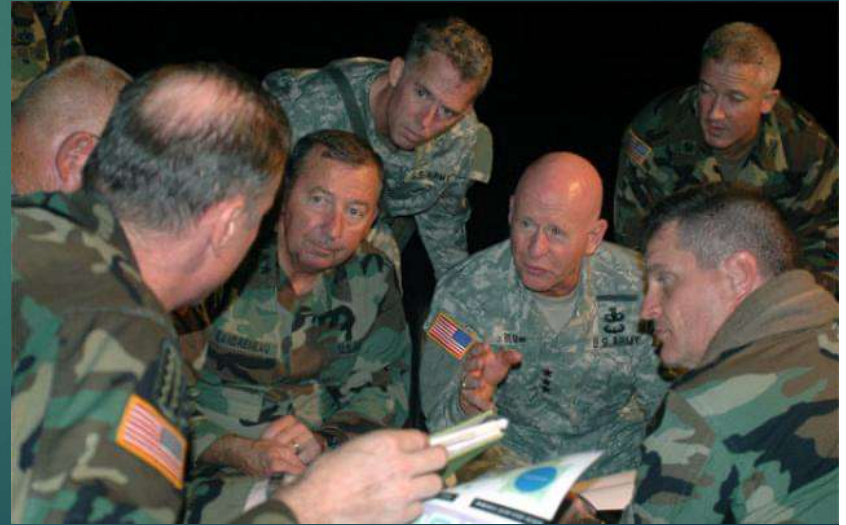
MSRA

- ▶ We have SCRA and USERRA. Why MSRA?
 - ▶ Because SCRA does not apply to NG members while on State Active Duty or during normal periods of training under Title 32, U.S.C.
 - ▶ *Bowen v. U.S.*, 292 F.3d 1383 (Fed. Cir. 2002) – NG Annual Training does not qualify as “federal service on active duty”, under SCRA.
 - ▶ *NEW!* – USERRA does apply to certain (but not all) periods of SAD – P.L. 116-315 / 38 U.S.C. 4303(13).
- ▶ Supplemental to any SCRA or USERRA rights.
- ▶ MSRA adopts SCRA and USERRA and makes their protections enforceable in the same manner as the Act.



MSRA – “Service in the Uniformed Services”

- ▶ Same basic definition as USERRA
- ▶ It includes **all** State Active Duty (R.S. 29:7) by National Guard members who are activated pursuant to the call of the Governor of Louisiana, or any other state as provided for by law
- ▶ More inclusive of NG than SCRA or USERRA



MSRA Protections – Military Leave

- ▶ Any employee who leaves employment in order to perform service shall be treated as being on military leave during the period of service.
- ▶ Must notify employer of intent to return to position of employment IAW R.S. 29:410.
- ▶ Employee shall continue to accrue leave according to employer's stated leave policy as if continuously employed.
- ▶ Employer can't deduct from SM compensation the cost of replacing SM during his active service.



MSRA Protections

- ▶ Maintain employer-provided insurance during deployment
- ▶ Creditable service toward vesting and computation of benefits in retirement system, pension fund, or employee benefit plan.
- ▶ State income taxes deferred until 6 months after end of military service.
- ▶ Waiver of Motor Vehicle reinstatement fees for failure to pay liability insurance premiums.
- ▶ Suspension of payment of reinstatement fee for any license imposed by the state or any public or governmental entity until 180 days after return.
- ▶ Protection against academic penalties.



MSRA Protection - Termination of Contracts

- ▶ SM may suspend or terminate the following contracts:
 - ▶ Cellular Phone Contracts.
 - ▶ Other telecommunication services.
 - ▶ Internet.
 - ▶ Athletic club and gym memberships.
 - ▶ Television services.
 - ▶ Satellite radio services.
 - ▶ Utility services.
- ▶ SM must provide notice of term/suspension and include a copy of military orders.
- ▶ No termination or cancellation fee may be imposed.



Enforcement of MSRA

- ▶ La. Attorney General may institute suits to enforce MSRA in any court of competent jurisdiction and appropriate venue
- ▶ District court may require the employer to:
 - ▶ Comply with provisions of MSRA.
 - ▶ Compensate the person for any loss of wages or benefits suffered by noncompliance.
 - ▶ Pay the person for lost wages or benefits as liquidated damages, if court finds willful noncompliance.
- ▶ Court may award reasonable litigation expenses, including but not limited to the payment of reasonable attorney fees.



SM Immunities

- ▶ R.S. 29:23 – No member of the State Military Forces shall be indicted, prosecuted, or sued for any injury to any person or property performed or committed by him while in state service and in the course of the business of the military forces of Louisiana
- ▶ R.S. 29:23.1 – The State of Louisiana and National Guard members are protected under the Federal Tort Claims Act (28 U.S.C. 2671, et seq.) from any damages/injury caused by the NG SM while on training or duty under Title 32 of the U.S. Code
- ▶ R.S. 29:735 – Immunity for the State and for State employees (incl. NG personnel) engaged in homeland security and emergency preparedness and recovery activities



Louisiana Code of Military Justice



LCMJ

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- ▶ La. R.S. 29:101, et seq.
- ▶ Originally created by Act 621 of the 1974 R.S. of the Legislature
- ▶ Co-Authored by Rep. Frank Simoneaux, who was a LANG Judge Advocate at the time, and Rep. (and Captain) Jim Brown, future State Secretary of State and Treasurer
- ▶ Repealed the “Articles of War of the State of Louisiana”
- ▶ Drafted to be as close to identical as possible to the Federal Uniform Code of Military Justice “UCMJ”



LMCJ Purpose

- ▶ Allow Commanders to enforce Good Order and Discipline in the State Military Forces
- ▶ Courts-Martial under the LCMJ are not criminal courts or criminal proceedings under the State Constitution – State ex rel. Lanng v. Long, 136 La. 1 (La. 1914); State v. Davis, 2010 La. App. Unpub. LEXIS 626 (La.App. 1 Cir. 2010)



LCMJ Jurisdiction – R.S. 29:102

- ▶ Personal jurisdiction - applies to all members of State Military Forces at all times and all places
- ▶ Subject matter jurisdiction exists if there is a clear and convincing nexus between offense and the State Military Force
- ▶ Applies to offenses of LANG SM while serving as a member of the Active Army/Air Force, if the federal convening authority declines to convene a court-martial under the UCMJ



LCMJ Punitive Articles

- ▶ Purely Military Offenses (Military Only) – Absent without Leave, Missing Movement, Failure to Obey an Order, Disrespect, Conduct Unbecoming, Malingering
- ▶ Common Offenses (Military or DA) – Assault, Forgery, DUI, Sexual Assault, Larceny, Stalking, Perjury
- ▶ Civilian-Only Offenses (DA Only) – Murder, Rape, Robbery, Writing Bad Checks, Arson, Extortion, Burglary



LCMJ Structure

- Very Limited Punishment Structure
- All LCMJ Convictions (SPCM and GCM) are misdemeanors

	Article 15	Summary CM	Special CM	General CM
Confinement	None	30 days	1 year	2 years
Reduction	Depends	E-1	E-1	E-1
Fine	Depends	\$100	\$200	\$1000
Forfeiture	Depends	1 month	All	All
Punitive Discharge	No	No	Bad Conduct, Dishonorable	Dismissal, Bad Conduct, Dishonorable



Trial Defense Service

- ▶ Provides free military defense counsel for Army personnel facing certain military justice or adverse administrative actions
- ▶ SM has a right to retain civilian defense counsel at SM's cost
- ▶ Not allowed to represent SM in civilian criminal court proceedings
- ▶ In Louisiana, we have a Regional Defense Counsel (Lt. Col.), Deputy RDC (Maj.) and two Trial Defense Counsel (Capt.)
- ▶ Separate rating chain from Commander or State Judge Advocate



Why Is It Important to Have Legal Protections for Servicemembers?



Why Is It Important?

- ▶ Our military forces are a valuable resource which is used to achieve National objectives and ensure National Security.
- ▶ Our Soldiers, Sailors, Marines, and Airmen need to be free from the worry of legal actions or job loss while defending our freedoms.



Why Is It Important?

- ▶ The U.S. Military is an all-volunteer force, there is no draft.
- ▶ Removing barriers to service is paramount to ensuring that our Military Services' ranks are filled.
- ▶ SCRA, USERRA, and MSRA are force multipliers to ensure that employers treat our servicemembers fairly.



Why Is It Important?

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- ▶ At home, the National Guard is the backbone of homeland defense and emergency response.
- ▶ Louisiana has an interest in the trouble-free transition of Soldiers and Airmen onto Active Duty and back to civilian status.



What can YOU do to help?

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What can YOU do to help?

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- ▶ We always need more Judge Advocates, Paralegals, and other Officers and Enlisted personnel, in general
- ▶ It is a rewarding and fulfilling part-time career
- ▶ The JAG Corps provides legal and leadership training which will benefit you and your employer



Questions or Want to Join?

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