

# Legal Rights of Illinois Service Members



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**A Summary of Laws Benefitting Illinois Military Service Members and Veterans**



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**OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS**

**KWAME RAOUL  
Attorney General**

Dear Illinois Service Member or Veteran:

Your dedication to serving our nation in the armed forces has earned you a number of rights and benefits. As Attorney General, it is an honor to advocate on your behalf so that you receive all that you are due, both within and outside of your military duties. My office's Military and Veterans Rights Bureau also remains on watch to protect service members and their families from fraudulent attempts to cause financial harm or to take advantage of your military status.

This new fourth edition of the *Legal Rights of Illinois Service Members: A Summary of Laws Benefitting Illinois Military Service Members and Veterans* has been created to provide a general overview of the many legal protections, rights, and benefits that may apply to you. Details on the Federal and state veterans affairs benefits are covered in a separate publication from my office, *Benefits for Illinois Veterans*.

The purpose of this handbook is to help you secure the rights and benefits to which you are entitled. This book will give you a better understanding of:

- Military (Re-)Employment Rights and Veterans Preferences
- Consumer Law Protections for the Military
- Rights Regarding Lawsuits Against Active-Duty Service Members
- Other Beneficial Legal Provisions

The rights and benefits available to you and your dependents or survivors were earned by you and past generations of veterans. There is no way to put a value on your sacrificial service. However, as Attorney General, I am committed to working with Illinois service members to guarantee that your rights and benefits are always protected.

Sincerely,

A handwritten signature in black ink, appearing to read "Kwame Raoul". The signature is stylized and fluid.

Attorney General  
Kwame Raoul

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# Chapter 1: Employment Laws

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## A. Employment Protections for Military Members

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### 1. USERRA- Uniform Services Employment and Reemployment Rights Act (38 U.S.C. 4301 *et seq.*)

#### General Concepts/Introduction

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) was enacted to provide a comprehensive framework for the rights and obligations of the employer and the employed military member.<sup>1</sup> The USERRA statute has the following main purposes:

- **Promote Service:** To encourage non-career service in the uniformed services by minimizing disruption to the service member's civilian employment due to military service;
- **Minimize Disruption at Home:** To minimize disruption to the service member's employers, family, community and co-workers by providing for prompt re-employment upon return; and
- **Prohibit Discrimination:** To prohibit discrimination against individuals because of their service in the uniformed services.<sup>2</sup>

#### Definitions

##### **Employer**

USERRA applies to employers of all sizes, and to the federal and state governments as employers.<sup>3</sup>

##### **Employee**

USERRA protects all employees, including part-time employees, unless the employment is for a brief, nonrecurring period and is not reasonably expected to last indefinitely or for a significant period.<sup>4</sup> USERRA does not protect independent contractors and others considered to be self-employed.<sup>5</sup>

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<sup>1</sup> 38 U.S.C. § 4301 *et seq.*, US Dep of Labor: <https://www.dol.gov/agencies/vets/programs/userra>

<sup>2</sup> 38 U.S.C. § 4301(a).

<sup>3</sup> 38 U.S.C. § 4303(4)(A). "The term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and other territories of the United States (including the agencies and political subdivisions thereof)." 38 U.S.C. § 4303(14).

<sup>4</sup> 38 U.S.C. § 4312(d)(1)(C).

<sup>5</sup> 20 C.F.R. §1002.44.



## **Uniformed Services**

An employer must grant leave to employees who perform duties, voluntary or involuntary, in the "uniformed services," including the U.S. Army, the U.S. Navy, the U.S. Marine Corps, the U.S. Air Force, the U.S. Coast Guard and the U.S. Public Health Service commissioned corps, as well as the federal reserves of each of these services.<sup>6</sup> Federal training or service in the Army National Guard and Air National Guard also gives rise to rights under USERRA, but USERRA does not cover state active duty under all circumstances.<sup>7</sup> Moreover, USERRA protection can be extended to any other category of persons designated by the President of the United States in time of war or emergency.<sup>8</sup>

## **Interaction with Other Laws**

USERRA sets the minimum protections, superseding inconsistent State law.<sup>9</sup> States are free to grant additional benefits and protections, as "[n]othing in this chapter shall supersede, nullify or diminish any Federal or State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that establishes a right or benefit that is more beneficial to, or is in addition to, a right or benefit provided..." by USERRA.<sup>10</sup> In a number of instances noted in this Chapter, Illinois has indeed established rights and benefits that are more beneficial in certain circumstances than those afforded under USERRA. For example, USERRA covers employees who are in federal service, but not employees activated under state orders. However, for example, the Illinois Service Member Employment and Reemployment Rights Act<sup>11</sup> offers protections similar to USERRA for employees activated under state orders (see Section A2).

## **Employee Notice Requirement**

An employee must provide advance notice to the employer of leave unless giving notice is impossible, unreasonable or precluded by military necessity.<sup>12</sup> Notice may be written or verbal and may be given by an "appropriate officer of the uniform service."<sup>13</sup>

## **Reemployment Rights**

For the protections of USERRA to apply, the service member must meet five eligibility criteria:

- **Absence:** The employee must have left civilian employment to perform military service;
- **Notice Given:** The employee must have given notice that they were leaving to perform military service;
- **Total of 5 Years of Service (with Exceptions):** The employee's cumulative period of service must not have exceeded five years – with certain exceptions;
- **Honorable Discharge:** The employee must have been released from military service under honorable or general conditions; and

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<sup>6</sup> 38 U.S.C. § 4303(13),(16).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> 38 U.S.C. § 4302(b).

<sup>10</sup> 38 U.S.C. § 4302(a).

<sup>11</sup> 330 ILCS 61/1- 10

<sup>12</sup> 38 U.S.C. § 4312(a)(1),(b).

<sup>13</sup> 38 U.S.C. § 4312(a)(1).

- **Timely Return to Work:** The employee must have reported back to work within the statutory time frame.

Under USERRA, reemployment rights are based on the duration of military service rather than the type of military duty performed.<sup>14</sup> The time limits for returning to work are as follows:

- **1-30 days service:** By the beginning of the first regularly scheduled work period after the end of the last calendar day of duty, plus time required to return home safely and complete an eight hour rest period. If this is impossible or unreasonable, then as soon as possible.
- **31-180 days:** The employee must apply for reemployment no later than 14 days after the completion of their military service. If this is impossible or unreasonable through no fault of the employee, then as soon as possible.
- **181 days or more:** The employee must apply for reemployment no later than 90 days after the completion of their military service.

### **Service-connected Injury or Illness**

Reporting or application deadlines are extended for up to two years for persons who are hospitalized or convalescing.

### **Untimely Reapplication Does Not Bar Reemployment**

Employees who fail to report or reapply for employment within the statutory timeframe do not automatically forfeit their reemployment rights, but will be subject to the policy and disciplinary practices of the employer.<sup>15</sup>

### **Reemployment Position**

USERRA requires employers to “promptly reemploy” military personnel upon their discharge from service, placing the former employee in the job that the employee would have attained if the employee had not been absent for military service.<sup>16</sup> This reemployment obligation is sometimes referred to as the “escalator” principle because the employee steps back into the workplace at the point they would have occupied had they never left for military service. The escalator can go up, meaning the employee may advance in the company despite the military leave. Likewise, the escalator can go down and the employee would be vulnerable to the same economic ramifications as similarly situated employees, such as downsizing or layoffs.<sup>17</sup>

## **Benefits**

### **Continuation of Benefits**

Under USERRA, employers must provide returning employees their “seniority rights” (that is, the additional seniority, rights and benefits that they would have attained if they had been continuously employed).<sup>18</sup> For instance, returning military personnel must be treated as if they had been continuously employed in calculating pension benefits, including determining when the

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<sup>14</sup> 38 U.S.C. § 4312(e)(1),(2).

<sup>15</sup> 38 U.S.C. § 4312(e)(3).

<sup>16</sup> 38 U.S.C. § 4313(a).

<sup>17</sup> 20 C.F.R. § 1002.194.

<sup>18</sup> 38 U.S.C. § 4316(a),(b).

employee qualifies for a pension and calculating the amount of the employee's monthly check. If, for example, an employee would have been eligible to participate in a company's pension plan during the employee's military leave, the company must place the employee in the plan retroactively to the date of initial eligibility. USERRA also contains detailed requirements for pension plans that require employee contributions.<sup>19</sup>

### **Vacation Benefits**

There is a common misconception that employers are obligated to continue to issue benefit time to military employees during all military absences. Accrued vacation time is often considered to be a form of short-term compensation (i.e., a non-seniority right), rather than a perquisite of seniority. In these instances, employers are not obligated to issue military employees additional benefit time during their service-connected absences. However, employers must issue benefit time to employees on military leave if the employer provides that benefit to similarly situated employees on comparable leaves of absence.<sup>20</sup> As such, a returning employee may not have a right to continue to accumulate paid vacation time during military service; however, vacation time issued prior to military service can be used upon return, or even during, periods of military service.<sup>21</sup> While a service member may not continue to receive additional paid vacation benefits during their absence, they do receive the benefit of additional seniority time, if the employer uses this method to determine the rate at which employees accrue vacation time.

There are employers who continue to issue their employees benefit time during military leaves of absence either as a matter of policy, a term of employment, or a component of a collective bargaining agreement. Nothing in USERRA or in Illinois law prohibits these additional benefits.

### **Protections for Service Members with Disabilities**<sup>22</sup>

USERRA provisions are similar to the Americans with Disabilities Act. However, USERRA provides more generous accommodations than the ADA. For instance, employers must make reasonable efforts to assist a returning service member in becoming qualified for a job. Moreover, employers must help the returning service member become qualified to perform the required duties regardless of whether the service member has a service-connected disability requiring reasonable accommodation. If a returning service member cannot perform the duties of an escalator position after an employer's reasonable efforts, then he or she should be placed in an alternative position of like status, seniority and pay.<sup>23</sup>

### **Discharge Protection**

In addition to requiring employers to reemploy military personnel, USERRA also limits the right to terminate the employment of returned service men and women. If an employee has served for more than 180 days, the employer can terminate that reemployed individual only for cause during the first year of reemployment.<sup>24</sup> If the person's period of service was more than 30 days but less

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<sup>19</sup> 38 U.S.C. § 4318.

<sup>20</sup> 20 C.F.R. §1002.150(c); see also *Foster v. Dravo Corp.*, 420 U.S. 92, 100-01 (1975).

<sup>21</sup> 20 C.F.R. § 1002.153.

<sup>22</sup> 38 U.S.C. § 4313(a)(3).

<sup>23</sup> *Torres v Texas Department of Public Safety.*, 597 U.S. \_\_\_, 20-603 (2022).

<sup>24</sup> 38 U.S.C. § 4316(c)(1).

than 181 days, the employer can terminate the reemployed individual only for cause during the first 180 days of reemployment.<sup>25</sup>

### **Discrimination and Retaliation Prohibited**

USERRA also prohibits employers from discriminating against individuals based on their past, present or future military obligations.<sup>26</sup> USERRA protects covered employees from discrimination regarding initial employment, reemployment, retention, promotion and benefits.

Moreover, USERRA prohibits employers from retaliating against anyone – whether or not the person actually has performed military service – who takes any of the following actions:

- **Files Complaints:** Files a complaint under USERRA;
- **Bears Witness:** Testifies, assists or otherwise participates in an investigation or a proceeding under USERRA; or
- **Exercises Rights:** Exercises any right provided under USERRA.<sup>27</sup>

The framework for analyzing USERRA claims is fundamentally different than Civil Rights violation (Title VII) claims.<sup>28</sup> USERRA's two-pronged burden-shifting analysis is markedly different from the four-pronged *McDonnell Douglas* framework burden-shifting analysis in Title VII actions.<sup>29</sup> In USERRA claims, the employee must show that the military service was a substantial or motivating factor in the adverse action.<sup>30</sup> On March 1, 2011, the U.S. Supreme Court held that if a supervisor, motivated by bias against the military, performs an action with intent to cause an employee to be fired, and if that act actually causes the employee to be fired, the employee can sue the company for employment discrimination, even if the biased supervisor is not the final decision maker and even if the final decision maker is unbiased.<sup>31</sup>

Once the employee shows that his or her military service was a substantial or motivating factor in the adverse action, the burden shifts to the employer to demonstrate that (1) the employer's stated reason is not a pretext and (2) that "the action would have been taken in the absence of [the employee's military] service."<sup>32</sup> A leading case on this standard is *Velazquez-Garcia v. Horizon Lines of P.R.*<sup>33</sup>

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<sup>25</sup> 38 U.S.C. § 4316(c)(2).

<sup>26</sup> 38 U.S.C. § 4311(a).

<sup>27</sup> 38 U.S.C. § 4311(b).

<sup>28</sup> Civil Rights Act of 1964 (Pub. L. 88-352).

<sup>29</sup> *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) (holding that complainant in a trial under Title VII of the Civil Rights Act of 1964 must carry initial burden under the statute of establishing a *prima facie* case of racial discrimination and that may be done by showing (1) that he belongs to a racial minority; (2) that he applied and was qualified for a job for which the employer was seeking applicants; (3) that, despite his qualifications, he was rejected; and (4) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications. Civil Rights Act of 1964, § 701 *et seq.*

<sup>30</sup> *Maier v. City of Chicago*, 547 F.3d 817, 824 (7th Cir. 2008).

<sup>31</sup> *Staub v. Proctor Hospital*, 131 S. Ct. 1186 (2011).

<sup>32</sup> 38 U.S.C. § 4311(c).

<sup>33</sup> 474 F.3d 11 (1st Cir. 2007).

## **Education and Mediation**

The Employer Support of Guard and Reserve (ESGR) is a Department of Defense (DOD) agency established to educate service members and their civilian employers about their rights and responsibilities under USERRA. ESGR does not enforce USERRA, but serves as a neutral, free resource for employers and service members.

ESGR's Ombudsman Services Program provides information and mediation on issues related to USERRA. ESGR ombudsmen are volunteers located throughout the U.S. and U.S. territories. The ESGR office can be contacted at 1-800-336-4590. The website for the Illinois ESGR is <https://www.esgr.mil/About-ESGR/Contact/Local-State-Pages/Illinois>.

## **Enforcement**

An employee may pursue his or her rights under USERRA by filing an administrative claim with the U.S. Department of Labor or by pursuing litigation through a private attorney.<sup>34</sup> The employee has the right to a jury trial and can recover actual damages for a violation of USERRA, including back pay, lost benefits and pension adjustments.<sup>35</sup> Other available remedies include reinstatement, correction of personnel files, provision of retroactive seniority, and restored vacation. In addition, a court can issue injunctive relief requiring an employer to comply with the law.<sup>36</sup> The court may impose double damages as liquidated damages for willful violations.<sup>37</sup>

## **Statute of Limitations**

Congress did not impose a limitations period for USERRA claims, and specifically disclaimed the applicability of state statutes of limitations.<sup>38</sup> However, the adverse party may argue that a claimant's unreasonable delay in bringing forth a USERRA claim has permanently damaged the adverse party's ability to assert a defense. Compare *McLain v. City of Somerville* (refusing to apply laches to bar a three-year-old USERRA claim)<sup>39</sup> with *Miller v. City of Indianapolis* (applying laches to bar a USERRA claim based on decades-old events where key witnesses had died or retired).<sup>40</sup>

## **2. ISERRA - Illinois Service Member Employment and Reemployment Rights Act (330 ILCS 61/1 et seq.)**

### **General Concepts/Introduction**

The Illinois Service Member Employment & Reemployment Rights Act or ISERRA is a law designed to protect the common public interest in safeguarding and promoting military service by:

- Minimizing disadvantages to military service in civilian careers;

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<sup>34</sup> 38 U.S.C. § 4322(a), 4323(a).

<sup>35</sup> 38 U.S.C. § 4323(d).

<sup>36</sup> 20 C.F.R. 1002.314.

<sup>37</sup> 38 U.S.C. § 4323(d)(1)(C).

<sup>38</sup> 20 C.F.R. 1002.311.

<sup>39</sup> 424 F.Supp.2d 329, 337 (D. Mass. 2006).

<sup>40</sup> 281 F.3d 648, 653-54 (7th Cir. 2002).

- Providing for prompt reemployment and protections of service members in a manner that minimizes disruption to the lives of such employees, their employers, and co-workers;
- Prohibiting discrimination against and interference with military service; and
- Ensuring that public entities are model employers of reserve components by providing additional benefits.<sup>41</sup>

Like USERRA, ISERRA provides a foundational, or minimum, level of protections afforded to service members employed in the state. As a result, employers are free to establish benefits which are more beneficial to service members.<sup>42</sup>

### **Who is Covered?**

Any employee engaged in military service. Military service is defined as:

- Service in the Armed Forces of the U.S., the National Guard of any State or territory regardless of status, and the State Guard;
- Any member of a federally recognized auxiliary of the US Armed Forces when performing official duties in support of military or civilian authorities as a result of an emergency;
- An employee who is absent from employment to receive medical care provided by the Department of Defense for a condition, illness, injury or illness sustained while they were engaged in military service.<sup>43</sup>

### **Employee or Independent Contractor?**

Under ISERRA six factors are used to determine whether a service member is an employee or an independent contractor:

- The extent of the employer's right to control the manner in which the individual's work is to be performed;
- The opportunity for profit or loss that depends upon the individual's managerial skill;
- Any investment in equipment or materials required for the individual's tasks, or his or her employment of helpers; and
- Whether the service the individual performs requires a special skill;
- The degree of permanence of the individual's working relationship; and
- Whether the service the individual performs is an integral part of the employer's business.

No single one of these factors is controlling, but all are relevant to determining whether an individual is an employee or an independent contractor.<sup>44</sup>

### **Military Leave**

ISERRA incorporates several sections of USERRA into Illinois law. These sections include the right to reemployment as long as certain conditions are met. Employers must reemploy service

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<sup>41</sup> 330 ILCS 61/1-5(1).

<sup>42</sup> 330 ILCS 61/1-5(2).

<sup>43</sup> 330 ILCS 61/1-10.

<sup>44</sup> 330 ILCS 61/1-20.

members returning from a period of service in the uniformed services if those service members meet five criteria:<sup>45</sup>

- Their absence was on account of military service.
  - The military service does not have to be the sole reason of the absence.
  - Service members must be released from their civilian employment with enough time to travel safely to their duty location and rest for 8 hours before reporting.
  - In cases of longer orders, lengthier pre-service absences may be appropriate to allow service members to arrange their affairs.
  
- The service member gave advance notice of their service.
  - Permission is not required, only notice
  - Notice can be given by an “appropriate officer”
  - Notice can be verbal or written but must be “reasonably clear”
  - No particular format is required. Informal notice is acceptable.
  - There is no requirement for how far in advance notice should be given, but service members are encouraged to give notice as far in advance as possible.
  - ISERRA contains a provision exempting service members from their notice obligation in cases of military necessity.<sup>46</sup>
  
- The cumulative period of qualifying military service with the same employer is less than 5 years.
  - The 5 year “clock” starts over with each new employer and may be restarted by reemployment (rehiring) with the same employer.
  - The 5 year period does not count several duty statuses such as inactive duty training, annual training, state active duty, involuntary duty listed in 20 CFR 1002.103, or an initial service obligation in excess of 5 years.
  - Periods of transit or military leave without orders (such as travel or time to get affairs in order) do not count towards the 5 year period.
  - Military service performed to avoid economic harm resulting from an employer’s violation of law do not count towards the 5 year rule.
  
- The service member was not released from service under dishonorable or other punitive conditions.
  - Dishonorable discharge
  - Bad Conduct Discharge
  - Other than honorable conditions discharge
  - Dismissal of an officer
  - Dropped from the roles for absence without leave for over 3 months or imprisonment by a civilian court.
  - A state active duty disqualifying discharge or separation will also terminate reemployment rights.
  - A retroactive upgrade of a disqualifying or release will restore reemployment rights if the service member employee otherwise meets the reemployment eligibility criteria.

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<sup>45</sup> 330 ILCS 61/5-5.

<sup>46</sup> 330 ILCS 61/5-5(2)

- The service member reported back to the civilian employer in a timely manner or submitted a timely application for reemployment.
  - ISERRA incorporates and adopts the reporting timelines established by USERRA.
  - 1-30 days service: Return to work by the beginning of the first regularly scheduled work period after the end of the last calendar day of duty, plus time required to return home safely and an eight-hour rest period. If this is impossible or unreasonable, then begin as soon as possible.
  - 31-180 days: The employee must apply for reemployment no later than 14 days after completion of their military service. If this is impossible or unreasonable through no fault of the employee, then as soon as possible.
  - 181 days or more: The employee must apply for reemployment no later than 90 days after completion of their military service.

Employers may not impose additional restrictions or requirements regarding military leave. For example, it would not be appropriate for an employer to require an employee to find a work-shift replacement for their periods of service connected absence.<sup>47</sup>

### **Timing, Frequency, and Duration**

A service member employee is not required to accommodate their employer's needs as to the timing frequency, or duration of military leave; however employers are permitted to bring concerns over the timing frequency, or duration of military leave to the attention of the appropriate military authority. The accommodation of these requests are subject to military law and discretion.<sup>48</sup>

### **Performance Ratings**

A service member employee who is absent on military leave shall receive no less than the average of the ratings received over the past years. Additionally, the service member's rating cannot be lower than the rating they received immediately prior to their absence due to military leave.<sup>49</sup>

### **Seniority**

In computing seniority and service requirements for promotion eligibility or any other benefit of employment, the period of military duty shall be counted as civilian service. This protection does not apply to probationary periods.<sup>50</sup>

### **Discrimination and Retaliation**

USERRA's prohibitions on discrimination and retaliation against persons serving in the armed forces are incorporated into Illinois State law.<sup>51</sup>

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<sup>47</sup> 330 ILCS 61/5-5(2)

<sup>48</sup> Id.

<sup>49</sup> 330 ILCS 61/5-5(3)

<sup>50</sup> Id.

<sup>51</sup> 330 ILCS 61/5-15, 38 USC 4311



## **Health Insurance**

**Basic Protections-** If the service member employee's employer-based health plan coverage would terminate because of absence due to military service, the service member may elect to continue their coverage for up to 24 months after their absence begins, or for the duration of their military leave, whichever is shorter. Employees who are performing active service for less than 31 days are only responsible for the regular employee portion of their health insurance premiums. Employees who are absent for 31 days or longer may be required to pay up to 102 percent of the full premium of the plan, thereby covering the employee portion, employer portion, and administrative costs associated with the health insurance benefits.<sup>52</sup>

**Additional Benefits for Public Employees-** The service member employee is only required to pay the employee share of the premiums for the duration of the benefit (either the duration of their orders or 24 months, whichever is shorter).<sup>53</sup>

## **Pensions**

Employees are entitled to all accrued pension benefits they would have received had their civilian employment been continuous. This applies to defined benefit pensions, defined contribution plans and profit sharing plans, as well as to single-employer and multi-employer plans. ISERRA incorporates USERRA's pension protections into Illinois State Law.<sup>54</sup> This allows service members to receive the benefit of their pension plans, provided they make the employee contributions that are due. Service members have up to three times the duration of their military orders or five years (whichever is shorter) to tender their share of the pension contribution.<sup>55</sup> A service member can make up all, part, or none of their contributions at their discretion, but the employer's contribution requirements depend on what the employee pays.

## **Additional Compensation for Public Employees**

### **What is a Public Employee?**

"Public Employee" means any person classified as a full-time employee of the State of Illinois, a unit of local government, a public institution of higher education as defined in Section 1 of the Board of Higher Education Act, or a school district, other than an independent contractor.<sup>56</sup>

**Concurrent Compensation.** During periods of military leave for annual training, public employees shall continue to receive full compensation as a public employee for up to 30 days per calendar year.<sup>57</sup> Simply put, this means if a public employee is performing annual training orders they continue to receive full pay from their government employer for up to 30 days. Annual training is defined as any orders issued under the authority of 10 U.S.C. 10147, 10 U.S.C. 12301(b), or 32 U.S.C. 502(a).<sup>58</sup> Duty in-lieu of annual training does not qualify service members for concurrent compensation. Annual training days need not be completed consecutively.<sup>59</sup> In the rare instance that a service member would perform more than 30 days of annual training during a calendar

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<sup>52</sup> 330 ILCS 61/5-15, 38 USC 4317

<sup>53</sup> 330 ILCS 61/5-10(c)

<sup>54</sup> 330 ILCS 61/5-5, 38 USC 4318

<sup>55</sup> 38 USC 4318(b)(2)

<sup>56</sup> 330 ILCS 61/1-10

<sup>57</sup> 330 ILCS 61/5-10(a)

<sup>58</sup> 330 ILCS 61/1-10

<sup>59</sup> 330 ILCS 61/5-10(a)

year, any annual training orders in excess of 30 days will entitle the service member to differential compensation for the additional days.<sup>60</sup>

**Differential Compensation.** This benefit is designed to prevent financial harm to service member employees during periods of absence from their jobs with public employers. Differential compensation is pay owed by a public employer to a service member employee when their civilian daily rate of pay is higher than their military daily rate of pay.<sup>61</sup>

**What Military Service Qualifies for Differential Compensation?** Periods of military leave for active service, not including the first 30 days of annual training in a calendar year.<sup>62</sup> The first 30 days of annual training are excluded because public employees are entitled to concurrent compensation (double pay) during their first 30 days of annual training each calendar year.

**How Long is a Service Member Entitled to Differential Compensation?** It depends on whether the orders are classified as voluntary or involuntary under ISERRA. Differential compensation for voluntary active service is limited to 60 work days in a calendar year. Differential compensation for involuntary active service is not limited, and will continue throughout the duration of the orders.<sup>63</sup> The “voluntariness” of a set of military orders can be determined by inspecting the orders for an authorization code (frequently listed as “auth” on written orders). Authorization codes identify the legal authority to call the service member to active service. Once the code is obtained, it should be compared to the list found in ISERRA under the definition of “Active service”. Authorization codes found in section (1) are characterized as “voluntary.” Authorization codes listed in section (2) or not listed in either section are classified as “involuntary.”<sup>64</sup>

#### **Voluntary Active Service Codes**

- A. Any Duty under 32 U.S.C. 502(f)(1)(B);
- B. Active Guard Reserve Duty, Operational Support, or Additional Duty under 10 U.S.C. 12301(d) or 32 U.S.C. 502(f)(1)(B);
- C. Funeral Honors under 10 U.S.C. 12503 or 32 U.S.C. 115;
- D. Duty at the National Guard Bureau under 10 U.S.C. 12402;
- E. Unsatisfactory participation under 10 U.S.C. 10148 or 10 U.S.C. 12303;
- F. Discipline under 10 U.S.C. 802(d);
- G. Extended Active Duty under 10 U.S.C. 12311;
- H. Reserve Program Administrator under 10 U.S.C. 10211.

#### **Involuntary Active Service Codes**

- A. Annual Training or Drill Requirements under 10 U.S.C. 10147, 10 U.S.C. 12301(b) or 32 U.S.C. 502(a);
- B. Additional Training Duty or Other Duty under 32 U.S.C. 502(f)(1)(A);
- C. Pre-Planned or Pre-Programmed Combatant Commander Support under 10 U.S.C. 12304b;
- D. Mobilization under 10 U.S.C. 12301(a) or 10 U.S.C. 12302;
- E. Presidential Reserve Call-Up under; 10 U.S.C. 12304;
- F. Emergencies and Natural Disasters under 10 U.S.C. 12304a or 14 U.S.C. 712;
- G. Muster Duty under 10 U.S.C. 12319;

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<sup>60</sup> 330 ILCS 61/5-10(b)(4)

<sup>61</sup> 330 ILCS 61/1-10

<sup>62</sup> 330 ILCS 61/5-10(a)(b)

<sup>63</sup> 330 ILCS 61/5-10(b)

<sup>64</sup> 330 ILCS 61/1-10

- H. Retiree Recall under 10 U.S.C. 688;
- I. Captive Status under 10 U.S.C. 12301(g);
- J. Insurrection under 10 U.S.C. 331, 10 U.S.C. 332, or 10 U.S.C. 12406;
- K. Pending Line of Duty Determination for Response to Sexual Assault under 10 U.S.C. 12323;
- L. Initial Active Duty for Training under 10 U.S.C. 671.

**“Catch All” Provision**

Reserve component active service not listed in paragraph (1) or (2) shall be considered involuntary active service under paragraph (2).<sup>65</sup> Simply put, this means that all orders which contain authorization codes not listed in ISERRA should be categorized as “involuntary”.

**How do I Calculate Differential Pay?** Merely collecting military pay is not appropriate because differential is based on military base pay and not a service member’s gross or net pay. Actually going through the calculations as outlined in ISERRA is required to ensure accurate calculation of differential. The Office of the Attorney General has produced the worksheet below which can be used to help calculate differential pay. A fillable edition of this worksheet can be found on the Attorney General’s website at <https://illinoisattorneygeneral.gov/>. The Attorney General’s website also contains a PowerPoint presentation which provides additional guidance on the calculation of differential compensation.

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<sup>65</sup> 330 ILCS 61/1-10



## SIMPLIFIED DIFFERENTIAL COMPENSATION CALCULATION WORK SHEET

This document is not legal advice. It is a guide to assist with differential calculations under ISERRA (330 ILCS 61 et al). Users should not assume all relevant criteria are factored into its computations. The accurate remuneration of differential remains the responsibility of the employer.

I acknowledge that I have read and understood the Disclaimer on the purpose of use of this form.

This worksheet is provided to assist employers and servicemembers in calculating differential compensation according to the Illinois Service Member Employment and Reemployment Rights Act (ISERRA) 330 ILCS 61. To complete this worksheet, you will need the service member's civilian and military pay information for the relevant pay period, civilian work schedule and military orders.

**Pay Period** in question (used for reference only, to insure comparison of public and military pay over the same relevant dates). (MM/DD/YEAR)  to

### Variables:

Total number of **Work Days** in the pay period (/1-15(a)).  (days)

**Calendar Days** in the pay period during which the employee was on military orders ((/1-15(b)(3)).  (days)

**Regular Compensation** as a public employee during the pay period (/1-15(b)(2)). \$  (\$X.XX)

**Base Pay** for the applicable military service during the pay period (/1-15(b)(3)). \$  (\$X.XX)

**Number of Compensable Work Days:** The number of work days missed, days that the SM would have otherwise worked except for military service, and for which the SM is owed differential compensation.  (days)

### Calculations:

**Daily Rate of Compensation as a Public Employee:** Regular compensation as a public employee divided by work days (/1-15(b)(2)). \$  (\$X.XX/day)

**Daily Rate of Compensation for Military Service:** Base pay for the applicable military service divided by the number of calendar days (/1-15(b)(3)). \$  (\$X.XX/day)

**Differential Compensation Daily Rate:** Daily rate of compensation as a public employee minus the daily rate of compensation for military service (/1-15(b)(1)). This amount is owed for each day the SM would have otherwise worked for the public employer (/1-15(b)). If the amount is 0 or a negative number, then no differential is owed. \$  (\$X.XX/day)

### Compensation Amount:

**Total owed to SM** for the pay period: Compensable Work Days multiplied by Differential Compensation Daily Rate. \$  (\$X.XX)

Reset Fields

The Military and Veterans Rights Bureau of the Office of the Illinois Attorney General is available to assist employers and service members toll free at 1-800-382-3000.

Revised: 01/2021

## **Enforcement**

Service members may bring private civil actions in response to violations of ISERRA.<sup>66</sup> Additionally, the Illinois Attorney General is tasked with enforcement through education, informal mediation, formal investigation, and litigation. Questions or concerns about ISERRA violations can be submitted through a Request for Assistance form found on the Attorney General's website at <https://illinoisattorneygeneral.gov/rights-of-the-people/military-and-veterans-rights/>. The Military and Veterans Rights Bureau maintains a helpline which can be reached at 1-800-382-3000.

## **B. Employment Protections for Military Families**

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### **1. Family Military Leave Act (820 ILCS 151/1 et seq.)**

#### **General Concepts/Introduction**

The Family Military Leave Act is designed to ensure that close family members of persons called to active military duty have an opportunity to spend time with their spouses or children before and during deployment without the risk of losing their jobs.<sup>67</sup> The Family Military Leave Act provides guaranteed unpaid leave for the employees of qualifying employers, with a protected right of return and protection of employment benefits during the leave.

#### **Coverage**

##### **Covered Employers**

The Act applies to both public and private employers, defining an employer as "any person, partnership, corporation, association or other business entity," including "the State of Illinois, municipalities and other units of local government."<sup>68</sup> Only employers with 15 or more employees are required to extend leave.<sup>69</sup>

##### **Covered Employees**

Family military leave under the Act is available to a qualifying employee who is the spouse or parent, child or grandparent of a person called to federal or state military service lasting longer than 30 days.<sup>70</sup> The Act applies to employees, as well as independent contractors, who have worked at least 12 months for the employer and have worked at least 1,250 hours in the 12 month period preceding the commencement of the leave.<sup>71</sup>

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<sup>66</sup> 330 ILCS 61/15-5

<sup>67</sup> 820 ILCS 151/1, *et seq.*

<sup>68</sup> 820 ILCS 151/5.

<sup>69</sup> 820 ILCS 151/10(a, b).

<sup>70</sup> 820 ILCS 151/5.

<sup>71</sup> *Id.*

### **Length of Leave and Notice to Employer**

The employer must provide up to 15 days of leave if it employs between 15 and 50 persons and up to 30 days of leave if it employs more than 50 persons.<sup>72</sup> An employee or independent contractor must give at least 14 days' notice prior to the date the leave will commence if the leave will consist of 5 or more consecutive work days, or as much notice as is practicable if the leave is for less than 5 consecutive days.<sup>73</sup> When possible, the employee or independent contractor should consult with the employer to minimize disruption to the employer's operations.

The employer may require certification from the proper military authority to verify the employee or independent contractor's eligibility for the leave.<sup>74</sup>

### **Exhaustion of Other Leave**

An employee is not to take unpaid leave under the Act unless he or she has exhausted all accrued vacation, personal, compensatory and other leaves – with the exception of sick and/or disability leave.<sup>75</sup>

### **Coordination with the Family and Medical Leave Act**

Leave granted under the Act may consist of unpaid leave. However, rights under the Act may not exceed the protection afforded under the Federal Family Medical Leave Act (FMLA). Therefore, the Act provides that if an employee also uses leave under FMLA because of a qualifying exigency arising out of the fact that the employee's spouse or child is called to active duty, the amount of leave available under the Act will be reduced by the number of days the employee takes under FMLA.<sup>76</sup>

### **Protections**

Employees exercising their rights under the Act "shall be entitled to be restored...to the position held by the employee when the leave commenced" or to an equivalent position.<sup>77</sup> An equivalent position is one with essentially similar seniority status, employee benefits, pay and other terms and conditions of employment.<sup>78</sup>

Employers must allow for employees (and independent contractors, if appropriate) to maintain benefits at the employee's expense for the duration of the leave and may negotiate maintenance of benefits at the employer's expense.<sup>79</sup>

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<sup>72</sup> 820 ILCS 151/10(a), (b).

<sup>73</sup> 820 ILCS 151/10(c).

<sup>74</sup> *Id.*

<sup>75</sup> 820 ILCS 151/10(d).

<sup>76</sup> An eligible employee shall be entitled to a total of 12 work weeks of leave during any 12-month period due to any qualifying exigency (as the Secretary shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. 29 U.S.C. § 2612 a(1)(E).

<sup>77</sup> 820 ILCS 151/15(a).

<sup>78</sup> *Id.*

<sup>79</sup> 820 ILCS 151/15(b).

## **Prohibited Acts**

Employers are prohibited from interfering with or restraining an eligible employee's request for leave and cannot take any adverse job action against an employee who exercises his or her rights under the Act. Employers are also prohibited from retaliating against any employee who opposes any practice made unlawful by the Act.<sup>80</sup>

## **Enforcement**

Individuals may enforce their rights under the Act by filing suit in court. State courts have jurisdiction to enjoin unlawful practices and/or retaliatory actions that violate the Act and may order "equitable relief that is necessary and appropriate to redress [such] violations or to enforce the Act."<sup>81</sup>

# **C. Preference in Hiring and Promotion**

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## **1. Federal Veterans' Preference Law**

### **General Concepts/Introduction**

Veterans' preference gives eligible veterans preference in appointment over many other applicants. Veterans' preference applies to virtually all new appointments in both the competitive and excepted service. Veterans' preference does not guarantee veterans a job and it does not apply to promotions, transfers, reassignments and reinstatements. Eligibility for veterans' preference is governed by 5 U.S.C. § 2108 and 5 CFR § 211.

### **Eligibility**

To qualify for preference points veterans must have served during a period of conflict or sustained a disability during their military service. In addition, the veteran must have been discharged or released from active duty under honorable conditions. This means that the veteran must have been discharged under an honorable or general discharge characterization. Retired members of the armed forces are not preference eligible unless they retired below the rank of major or its equivalent.

Honorably discharged disabled veterans are also eligible for preference points. Disabled veterans are defined as someone "who has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a statute administered by the Department of Veterans Affairs or a military department."

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<sup>80</sup> 820 ILCS 151/25.

<sup>81</sup> 820 ILCS 151/30.

## **Preference Eligible**

The two types of preference eligibility are disabled (10 point preference eligible) and non-disabled (five point preference eligible).

Honorably discharged veterans are eligible for five preference points if their active duty service meets any of the following:

- In a campaign or expedition for which a campaign medal has been authorized. Any Armed Forces Expeditionary medal or campaign badge, including Afghanistan (Operations Enduring Freedom (OEF), Iraqi Freedom (OIF)), Bosnia (Operations Joint Endeavor, Joint Guard, and Joint Forge), Global War on Terrorism, Persian Gulf, and others may qualify for preference; **OR**
- 180 or more consecutive days, any part of which occurred during the period beginning September 11, 2001 and ending on August 31, 2010, the last date of Operation Iraqi Freedom; **OR**
- Between August 2, 1990 and January 2, 1992; **OR**
- 180 or more consecutive days, any part of which occurred after January 31, 1955 and before October 15, 1976; **OR**
- Service in a war, campaign or expedition for which a campaign badge has been authorized or between April 28, 1952 and July 1, 1955.

Veterans are eligible for **10 preference points** if he or she served at any time and the veteran:

- has a service-connected disability, **OR**
- has a service-connected disability or is receiving compensation, disability retirement benefits, or pension from the military or the Department of Veterans Affairs, **OR**
- has received a Purple Heart.

Parents of certain veterans are eligible for **10 preference points** if they:

- are the parent of a deceased or permanently disabled veteran, **AND**
- their spouse is permanently disabled, **OR**
- they are unmarried or legally separated when the preference is claimed.

## **Preference Groups**

Preference eligibles are divided into five basic groups as follows:

- CPS - Disability rating of 30% or more (10 points)
- CP - Disability rating of at least 10% but less than 30% (10 points)
- XP - Disability rating less than 10% (10 points)
- TP - Preference eligibles with no disability rating (5 points)
- SSP- Sole Survivorship Preference (0 points)



## **Ranking Systems**

### **Numerical Ranking System**

When agencies use a numerical rating and ranking system to determine the best qualified applicants for a position, an additional 5 or 10 points are added to the numerical score of qualified preference eligible veterans.

### **Non-numerical Ranking System**

When an agency does not use a numerical rating system, preference eligibles who have a compensable service-connected disability of 10 percent or more (CPS, CP) are placed at the top of the highest category on the referral list (except for scientific or professional positions at the GS-9 level or higher). XP and TP preference eligibles are placed above non-preference eligibles within their assigned category.

## **Application**

To claim preference points, veterans must provide acceptable documentation of preference or appointment eligibility, preferably a DD214. Veterans claiming 10 points must submit Standard Form 15 which can be downloaded at [http://www.opm.gov/forms/pdf\\_fill/SF15.pdf](http://www.opm.gov/forms/pdf_fill/SF15.pdf).

Veterans who are unsure of their preference eligibility may visit the Department of Labor's Veterans' Preference Advisor, which can be found online at: <http://www.dol.gov/elaws/vets/vetpref/mservice.htm>.

## **2. Illinois Veterans' Public Employment Preference Laws**

### **General Concepts/Introduction**

Veterans in the State of Illinois may be entitled to preference in hiring or promotion. The Illinois Personnel Code grants preference in entrance examinations for certain state employment in the form of points to qualified persons, while the Illinois Municipal Code grants preference in hiring and promotion at the local level.

### **Preference in Hiring for State Construction Contracts**

Under the Veterans Preference Act<sup>82</sup>, the State, or any political subdivision thereof, must give a preference in hiring to qualified veterans in public construction contracts or projects. The requirements are twofold based on (1) the force to which the veteran belonged and (2) the nature of the veteran's status.

As to the first requirement, the person must have been either of the following during a time of hostilities with a foreign country:

- (1) A member of the Armed Forces of the United States;<sup>83</sup> or

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<sup>82</sup> 330 ILCS 55

<sup>83</sup> "Armed Forces of the United States" here means "the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, United States Reserve Forces, or Illinois National Guard. Service in the Merchant Marine that

- (2) A member of the armed forces of allies of the United States in time of hostilities with a foreign country while a citizen of the United States.

The person must also meet one of the following conditions to qualify as a veteran under this Act:

- (1) Service of at least six months; **OR**
- (2) Service for the duration of hostilities regardless of the length of engagement; **OR**
- (3) Service in the theater of operations which was interrupted by discharge on the basis of a hardship; **OR**
- (4) Service as a veteran who was released from active duty because of a service-connected disability and was honorably discharged.

There are still limitations built into the Act. First, “time of hostilities with a foreign country” is defined as “any period of time in the past, present, or future during which a declaration of war by the United States Congress has been or is in effect or during which an emergency condition has been or is in effect that is recognized by the issuance of a Presidential proclamation or a Presidential executive order and in which the armed forces expeditionary medal or other campaign service medals are awarded according to Presidential executive order.”<sup>84</sup>

Second, although the Act establishes a veterans preference, it also states that “such preference shall be given only to those persons who are found to possess the business capacity necessary for the proper discharge of the duties of such employment.

Finally, in terms of limitations, the Act guarantees that “[n]o political subdivision or person contracting for such public works is required to give preference to veterans, not residents of such district, over residents thereof, who are not veterans.”

Every public contract for such construction work shall contain a term providing for the preference given in Section 1 of the Act.<sup>85</sup>

The violation of this Act is a minor criminal offense. “Any person who knowingly and willfully violates the provisions of this Act, is guilty of a petty offense and shall be fined not less than \$75, nor more than \$300 for each offense.”<sup>86</sup>

### **Preference in State Employment: The Illinois Personnel Code**

The Illinois legislature has codified a veterans hiring preference.<sup>87</sup> The Personnel Code grants preference to veterans in entrance examinations for state employment, but does not grant veterans promotional preference. The Personnel Code applies to “[a]ll offices and positions of

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constitutes active duty under Section 401 of federal Public Law 95-202 shall also be considered service in the Armed Forces of the United States for purposes of this Section.” 330 ILCS 55/1.

<sup>84</sup> 330 ILCS 55/1.

<sup>85</sup> 330 ILCS 55/2.

<sup>86</sup> 330 ILCS 55/3.

<sup>87</sup> 20 ILCS 415/8b.7.; See also 80 Ill. Admin. Code §302.30.

employment in the service of the State of Illinois... unless exempted in this or any other Act.”<sup>88</sup> Preference is given in the form of points added to the final grade of veterans who otherwise qualify for the position and are entitled to appear on the list of those eligible for appointment to the position.<sup>89</sup>

## Definitions

A veteran is defined as an individual who was a member of the Armed Forces of the United States or who, while a citizen of the United States, was a member of the armed forces of allies of the United States in a time of hostilities with a foreign country.<sup>90</sup>

## Process of Determining Preference

Veterans seeking a preference shall provide documentation or execute any consent or other documents required by the respective agency to enable the department or agency to verify that the person is entitled to the preference.<sup>91</sup> Acceptable documentation includes a Release from Active Duty Department of Defense Form, Form DD214, or other evidence of honorable discharge.<sup>92</sup>

The department or agency director determines the order of persons entitled to a preference on eligible lists on the basis of their augmented ratings.<sup>93</sup> According to the Illinois Supreme Court, state departments or agencies are required to do the following under the Personnel Code:

- **Position Classification Plan:** Establish a position classification plan for all positions governed by the Personnel Code;<sup>94</sup>
- **Removal of Unqualified Candidates:** Eliminate those who are not qualified for entrance into state service;<sup>95</sup>
- **Evaluate Relative Fitness:** Discover the relative fitness of those who are qualified;<sup>96</sup> and
- **Establish Priority Lists:** Establish lists of names of candidates in order of their relative excellence in respective examinations.<sup>97</sup>

## Ratings Methods

The Personnel Code allows an agency to implement either categorical or numerical ratings methods to establish a list of candidates.

### Categorical Method

When the director of an agency establishes eligible lists on the basis of category ratings such as “superior,” “excellent,” “well-qualified” and “qualified,” the eligible veterans in each such category

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<sup>88</sup> 20 ILCS 415/4.

<sup>89</sup> 20 ILCS 415/8b.7(b).

<sup>90</sup> 20 ILCS 415/8b.7

<sup>91</sup> 20 ILCS 415/8b.7(j).

<sup>92</sup> 20 ILCS 415/8b.7(k).

<sup>93</sup> 20 ILCS 415/8b.7(f).

<sup>94</sup> 20 ILCS 415/8a.

<sup>95</sup> 20 ILCS 415/8b.1.

<sup>96</sup> *Id.*

<sup>97</sup> 20 ILCS 415/8b.3, 415/8b.7(f); *Denton v. Civil Service Commission of State of Illinois*, 679 N.E.2d 1234 (1997).

shall be preferred for appointment before the eligible nonveterans in the same category.<sup>98</sup> The Personnel Code mandates that agencies that use categorical ratings must not merely give an advantage to veterans, but appoint veterans over nonveterans in the same category.<sup>99</sup>

### **Numerical Method**

Agencies that use numerical lists may consider for appointment the three highest applicants on a list.<sup>100</sup> Veterans are not granted an absolute preference when numerical ranking is used.<sup>101</sup>

### **Preference Points**

Veterans and certain other persons qualifying based on relationship to a veteran receive preference points in varying amounts based on the nature of military service. A surviving unremarried spouse of a veteran who suffered a service-connected death or disability that disqualifies the veteran from civil service employment shall be entitled to the same preference to which the veteran would have been entitled.<sup>102</sup>

#### **10 Points**

The following persons are entitled to a preference of ten points:

- an honorably discharged veteran with a service-connected disability certified by the U.S. Department of Veterans Affairs;<sup>103</sup> **OR**
- an honorably discharged veteran of an allied country with a service-connected disability;<sup>104</sup> **OR**
- a veteran who is a Purple Heart recipient;<sup>105</sup> **OR**
- a parent of an unmarried veteran who suffered a service-connected death or service-connected disability that disqualifies the veteran from civil service employment (credit is given to the first parent who applies);<sup>106</sup> **OR**
- a surviving spouse or civil union partner, who has not subsequently married or entered into a civil union, of a veteran who suffered a service-connected death;<sup>107</sup> **OR**
- the spouse or civil union partner of a veteran who suffered a service-connected disability that prevents the veteran from qualifying for civil service employment.<sup>108</sup>

#### **5 Points**

A veteran who has served during a time of hostilities with a foreign country is entitled to a preference of five points if the veteran:

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<sup>98</sup> 20 ILCS 415/8b.7(f).

<sup>99</sup> 80 Ill. Admin. Code §302.30(d); *Denton v. Civil Service Commission of State of Illinois*, 679 N.E.2d 1234, 1238 (1997).

<sup>100</sup> 20 ILCS 415/8b.5.

<sup>101</sup> *Denton v. Civil Service Commission of State of Illinois*, 679 N.E.2d 1234, 1238 (1997).

<sup>102</sup> 20 ILCS 415/8b.7(h).

<sup>103</sup> 20 ILCS 415/8b.7(c).

<sup>104</sup> *id.*

<sup>105</sup> *id.*

<sup>106</sup> 20 ILCS 415/8b.7(i)

<sup>107</sup> 80 Ill. Admin Code §302.30(e).

<sup>108</sup> *Id.*

- served for a total of at least six months; **OR**
- served for the duration of the hostilities regardless of the length of the engagement; **OR**
- was discharged on the basis of hardship; **OR**
- was released from active duty due to a service-connected disability and was discharged under honorable conditions.<sup>109</sup>

### **3 Points**

A veteran of the United States Armed Forces, the United States Armed Forces reserves, or the Illinois National Guard, who is not eligible for preference under one of the categories above and who served under one or more of the following conditions is entitled to a preference of three points:

- the individual served a total of at least six months and was discharged under honorable conditions; **OR**
- they have been discharged on the ground of hardship; **OR**
- they were released from active duty because of a service connected disability; **OR**
- they served a minimum of four years in the Illinois National Guard or reserve component of the Armed Forces of the United States regardless of whether or not the person was mobilized to active duty.<sup>110</sup>

An active member of the National Guard or a reserve component of the Armed Forces of the United States is eligible for preference points if they meets the service requirements above.

### **Reinstatement on Eligibility List (After Absences Due to Military Service)**

A veteran who returns from active military service not exceeding four years shall be restored to an eligible list for the same class. The veteran must make this request within 90 days after discharge or from hospitalization continuing after discharge for not more than one year. The veteran who is eligible must provide (1) proof of satisfactory completion of training and service; and (2) be qualified to perform the current duties of the class.<sup>111</sup>

### **Enforcement**

Complaints under the Personnel Code are first decided by the Civil Service Commission, which has the authority to direct compliance with the Personnel Code.<sup>112</sup> The Commission may make declaratory rulings as to material questions involving the applicability and interpretation of the Personnel Code, the personnel rules of the Department of Central Management Services, or any order or final decision of the Commission.

### **Additional Treatment of Veterans Preferences Under the Personnel Rules**

Under the Personnel Rules, veterans' preferences are further discussed as follows:

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<sup>109</sup> 20 ILCS 415/8b.7(d).

<sup>110</sup> 20 ILCS 415/8b.7(e).

<sup>111</sup> 80 Ill. Admin Code §302.140(b).

<sup>112</sup> *Denton v. Civil Service Commission of State of Illinois*, 176 Ill.2d 144, 679 N.E.2d 1234, 1238, 223 Ill.Dec. 461 (1997); 20 ILCS 415/10(9); 80 Ill. Admin. Code §1.80(a).

## Section 302.30 Veterans Preference

- a) Appropriate preference in entrance examinations shall be granted to qualified persons who have been members of the Armed Forces of the United States or to qualified persons who, while citizens of the United States, were members of the armed forces of allies of the United States in time of hostilities with a foreign country (as set forth in Section 8b7 of the Personnel Code) and to certain other persons as set forth in this Section.
- b) To be eligible, applicant must have received discharge under honorable conditions and served under one or more of the following conditions:
  - 1) Served, for at least six months, in the Armed Forces of the United States, the Illinois National Guard, or any reserve component of the Armed Forces of the United States; or
  - 2) While a U.S. citizen, been a member of the armed forces of an ally of the U.S. in time of hostilities with a foreign country; or
  - 3) Discharged on the grounds of hardship; or
  - 4) Released from active duty because of a service connected disability; or
  - 5) Served for the duration of hostilities regardless of the length of engagement.
- c) Preference will be in the form of points added to the final grades of persons who otherwise qualify and are entitled to appear on the list of those eligible for appointments. Preference in entrance examinations will be granted as follows:
  - 1) Ten points shall be added to the entrance examination grade for veteran eligibles currently holding proof of a service connected disability from the U.S. Department of Veterans Affairs or from an allied country for service-connected disabilities or if the veteran is a Purple Heart recipient.
  - 2) Five points shall be added to the entrance examination grade for veteran eligibles who have served during a time of hostilities with a foreign country and who meet the qualifications set forth in subsection (b), but who do not qualify for 10 points under subsection (c)(1).
  - 3) A person not eligible for a preference under subsection (c)(1) or (c)(2) is qualified for a preference of 3 points if the person has served in the Armed Forces of the United States, the Illinois National Guard, or any reserve component of the Armed Forces of the United States and the person:
    - A) served for at least 6 months and has been discharged under honorable conditions; or
    - B) has been discharged on the grounds of hardship; or
    - C) was released from active duty because of a service-connected disability, or

- D) served a minimum of four years in the Illinois National Guard or reserve component of the Armed Forces of the United States, regardless of whether the person was mobilized to active duty.
- 4) An active member of the National Guard or a reserve component of the Armed Forces of the United States is eligible for the preference described in subsection (c)(3) if the member meets the service requirements of subsection (c)(3).
- d) If category ratings are used, the veteran eligibles in each category shall be preferred for appointment before the non-veteran eligibles in the same category.
- e) The following shall be entitled to the same preference to which the veteran would have been entitled under this Section:
- 1) a surviving unremarried spouse or civil union partner, who has not subsequently married or entered into a civil union, of a veteran who suffered a service-connected death; or
  - 2) the spouse or civil union partner of a veteran who suffered a service-connected disability that prevents the veteran from qualifying for civil service employment.
- f) A preference shall also be given to the following individuals: 10 points for one parent of a veteran who is not married or in a civil union partnership who suffered a service connected death or a service-connected disability that prevents the veteran from qualifying for civil service employment. The first parent to receive a civil service appointment shall be the parent entitled to the preference.
- g) Before a veteran's preference is granted, the Department of Central Management Services must verify the applicant's entitlement to the preference by requiring a certified copy of the applicant's most recent DD-214 (Certificate of Release or Discharge from Active Duty) or other evidence of the applicant's most recent honorable discharge from the Armed Forces of the United States. The Department of Central Management Services shall determine whether the documentation submitted by the applicant is acceptable. To be acceptable, the documentation submitted must be an authentic, official record of the United States Armed Forces evidencing the individual's military service.<sup>113</sup>

### **Preference in State Employment: The Illinois State Police**

The State Police Act provides for the waiver of the collegiate educational requirement for certain veterans and a hiring preference for those veterans. Under the Act, the Board must waive the education requirement for the past or currently serving service members who are veterans as specifically defined in the Act and have either:

- have been honorably discharged and who have been awarded a Southwest Asia Service Medal, Kosovo Campaign Medal, Korean Defense Service Medal, Afghanistan Campaign Medal, Iraq Campaign Medal, or Global War on Terrorism Expeditionary Medal by the United States Armed Forces, **OR**

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<sup>113</sup> 80 Ill. Admin. Code §302.20. (Amended at 42 Ill. Reg. 12956, eff. June 25, 2018.)

- are active members of the Illinois National Guard or a reserve component of the United States Armed Forces and who have been awarded a Southwest Asia Service Medal, Kosovo Campaign Medal, Korean Defense Service Medal, Afghanistan Campaign Medal, Iraq Campaign Medal, or Global War on Terrorism Expeditionary Medal as a result of honorable service during deployment on active duty, **OR**
- have been honorably discharged who served in a combat mission by proof of hostile fire pay or imminent danger pay during deployment on active duty; **OR**
- have at least 3 years of full active and continuous military duty and received an honorable discharge before hiring.

Preference shall be given in such appointments to persons who have honorably served in the military or naval services of the United States. All appointees shall serve a probationary period of 12 months from the date of appointment and during that period may be discharged at the will of the Director. However, the Director may in his or her sole discretion extend the probationary period of an officer up to an additional 6 months when to do so is deemed in the best interest of the Illinois State Police.<sup>114</sup>

### **Preference in State Employment – Other Constitutional Officers**

Employment positions in State government under constitutional officers other than the governor are exempt from the provisions of the Illinois Personnel Code.<sup>115</sup> Veterans' preference with other State of Illinois constitutional officers exists only if granted by that office. The Secretary of State Merit Employment Code gives hiring preference to veterans applying for positions with the Secretary of State.<sup>116</sup> The State Treasurer Employment Code gives preference to veterans applying for positions with the Office of the State Treasurer.<sup>117</sup> The Comptroller Merit Employment Code gives preference to veterans applying for positions with the Office of the Comptroller.<sup>118</sup> The State Universities Civil Service Act gives preference in entrance examinations to veterans applying for positions with the State University System.<sup>119</sup> The Illinois Procurement Code encourages the chief procurement officers to encourage prospective vendors to consider hiring qualified veterans and to notify them of any available financial incentives or other advantages associated with hiring such persons.<sup>120</sup>

### **Preference in Public Works Contracts**<sup>121</sup>

In the employment and appointment to fill positions in the construction, addition to or alteration of all public works undertaken or contracted for by the state, Illinois gives preference to veterans of

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<sup>114</sup> 20 ILCS 2610/9.

<sup>115</sup> 20 ILCS 415/4c(2).

<sup>116</sup> 15 ILCS 310/10b.7.

<sup>117</sup> 15 ILCS 510/9b.5.

<sup>118</sup> 15 ILCS 410/10b.7.

<sup>119</sup> 110 ILCS 70/36g. The University System encompasses the following agencies and institutions: Illinois Community College Board, Southern Illinois University, Chicago State University, Eastern Illinois University, Governors State University, Illinois State University, Northeastern Illinois University, Northern Illinois University, Western Illinois University, University of Illinois, State Universities Civil Service System, State Universities Retirement System, the State Scholarship Commission, and the Board of Higher Education. 110 ILCS 70/36b. This Act does not cover the following employees: (1) Merit Board officers and members; (2) presidents and vice-presidents of each educational institution; (3) principal administrative employees of each institution and agency; (4) teaching, research and extension faculties of each institution and agency; and (5) students employed under rules prescribed by the Merit Board, without examination or certification.

<sup>120</sup> 30 ILCS 500/45-67.

<sup>121</sup> 330 ILCS 55/0.01.



the U.S. Armed Forces or to those who served as members of the U.S. Armed Forces and served under one or more of the following conditions:

- The veteran served a total of at least 6 months, **OR**
- The veteran served for the duration of hostilities regardless of the length of engagement, **OR**
- The veteran served in the theater of operations but was discharged on the basis of a hardship, **OR**
- The veteran was released from active duty because of a service-connected disability and was honorably discharged. But such preference shall be given only to those persons who are found to possess the business capacity necessary for the proper discharge of the duties of such employment. No political subdivision or person contracting for such public works is required to give preference to veterans, not residents of such district, over residents thereof, who are not veterans.

### **Enforcement**

Any person who knowingly and willfully violates the provisions of this Act is guilty of a petty offense and shall be fined not less than \$75, nor more than \$300, for each offense.<sup>122</sup>

### **Preference in Municipal Employment: The Illinois Municipal Code**

#### **Veterans' Preference for Civil Service Employment in Municipalities<sup>123</sup>**

Persons engaged in the active military or naval service of the U.S. for a period of at least one year who were honorably discharged will receive 5 preference points and shall be preferred for appointment to civil offices, positions and places of employment in the classified service of any municipality that has appointed a civil service commission pursuant to the Illinois Municipal Code.<sup>124</sup> A municipality organized as a home rule unit of local government may enact an ordinance superseding the veterans' preference provisions of the Illinois Municipal Code.<sup>125</sup> By way of example, the City of Champaign has enacted an ordinance granting veterans preference only to entrance examination and not promotion.<sup>126</sup>

#### **Veterans' Preference for Civil Service Employment in Municipalities: Entrance Examinations**

If otherwise qualified for a position, veterans are given preference over non-veterans for hiring in civil offices, positions and places of employment of any municipality that has appointed a civil service commission. This preference is given by adding points to the final grade average that the veteran receives on a municipal entrance examination.<sup>127</sup> Five points will be added to the original entrance examination score received by any veteran on an eligibility list who was engaged in the active military or naval service of the United States for a period of at least one year and received an honorable discharge.<sup>128</sup>

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<sup>122</sup> 330 ILCS 55/3.

<sup>123</sup> 65 ILCS 5/10-1-1.

<sup>124</sup> 65 ILCS 5/10-1-16.

<sup>125</sup> Ill Const. art. VII § 6, *Paglini v. Police Bd. of City of Chicago*, 335 N.E.2d 480 (1975).

<sup>126</sup> Champaign Mun. Code 2-503 (c,d).

<sup>127</sup> 65 ILCS 5/10-1-16.

<sup>128</sup> *Herbert v. Board of Fire and Police Com'rs of City of Rolling Meadows*, 97 Ill.App.3d 1138 (1st Dist. 1981).

## **Veterans' Preference for Civil Service Employment in Municipalities: Promotional Examinations**

Points will be added to the final grade average on any promotional examination taken by individuals whose names appear on the promotional-eligible registers of a municipality.<sup>129</sup> Eligible veterans will receive as the result of any promotional examination seven-tenths of one point for each six months or fraction thereof of active military or naval service, not exceeding 30 months.<sup>130</sup> No person shall receive the preference for a promotional appointment granted by the Municipal Code after he or she has received one promotion from an eligible list on which the individual was allowed such preference.

### **Veterans' Preference under the Board of Fire and Police Commission: Overview**

Individuals who were engaged in U.S. military service for a period of at least one year of active duty and who were honorably discharged, or who are now or have been members on inactive or reserve duty in such military or naval service,<sup>131</sup> will receive 5 preference points and be preferred for appointment<sup>132</sup> to offices, positions and places of employment in the fire and police departments of any municipality that has appointed a board of fire and police commissioners.<sup>133</sup> These provisions do not apply to municipalities organized as home rule units of local government.<sup>134</sup>

### **Veterans' Preference under the Board of Fire and Police Commission: Entrance Examinations**

If otherwise qualified for a position, veterans are given preference over non-veterans for hiring in civil offices, positions and places of employment in the fire and police departments of any municipality that has appointed a board of fire and police commissioners. This preference is given by adding points to the grade average that the veteran receives on an original entrance examination.<sup>135</sup> Five points will be added to the original entrance examination score received by any veteran on an eligibility list who was engaged in the active U.S. military or naval service for a period of at least one year and received an honorable discharge.<sup>136</sup>

### **Veterans' Preference under the Board of Fire and Police Commission: Promotional Preference**

Veterans who were engaged in U.S. military service for a period of at least one year of active duty and who were honorably discharged, or who are now or have been members on inactive or

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<sup>129</sup> 65 ILCS 5/10-1-16.

<sup>130</sup> *Id.*

<sup>131</sup> 65 ILCS 5/10-2.1-8.

<sup>132</sup> 65 ILCS 5/10-2.1-9(a).

<sup>133</sup> Municipalities that have appointed a board of fire and police commissioners instead of a civil service commission. 65 ILCS 5/10-2.1-1; 65 ILCS 5/10-2.1-27.

<sup>134</sup> 65 ILCS 5/10-2.1-8.

<sup>135</sup> 65 ILCS 5/10-1-16.

<sup>136</sup> 65 ILCS 5/10-2.1-8. See also *Herbert v. Board of Fire and Police Com'rs of City of Rolling Meadows*, 97 Ill.App.3d 1138 (1st Dist. 1981).

reserve duty in such military or naval service, and whose name appears on a promotional eligibility register will be preferred for promotion over non-veterans.<sup>137</sup>

### **Veterans' Preference under the Board of Fire and Police Commission: Promotional Examinations**

The board of fire and police commissioners will give preference points to the final grade average on any promotional examination taken by eligible veterans whose names appear on the promotional-eligible registers of a municipality that has appointed a board of fire and police commissioners.<sup>138</sup> Eligible veterans will receive as the result of any promotional examination seven-tenths of one point for each six months or fraction thereof of active military or naval service, not exceeding 30 months. No person shall receive the preference for a promotional appointment granted by the board of fire and police commissioners after he or she has received one promotion from an eligible list on which the individual was allowed such preference.

### **Veterans' Preference under the Board of Fire and Police Commission: Age Requirements**

In general, applicants for a position in either the fire or police department of a municipality must be under 35 years of age. However, with respect to a **police department**, a veteran may exceed the maximum age provision by the number of years served on active military duty, but by no more than 10 years of active military duty.<sup>139</sup>

### **Fire Department Promotion Act<sup>140</sup>**

The Fire Department Promotion Act gives promotional preference to veterans serving a fire department operated by a municipality with a population of less than 1,000,000.<sup>141</sup> A person on a preliminary promotion list who is eligible for a veteran's preference under any law or agreement applicable to an affected department may file a written application for that preference within 10 days after the initial posting of the preliminary promotion list. The veteran's preference shall be calculated as provided in the applicable law and added to the applicant's total score on the preliminary promotion list. Any person who has received promotional preference under this Act or any other law will not be eligible for any subsequent veterans' preference under this Act.<sup>142</sup>

## **3. Preference in Cook County<sup>143</sup>**

### **Cook County Entrance and Promotion Preference**

In Title 55 of the Illinois Compiled Statutes, the Counties Code, there is no general provision for veterans' preferences in hiring and promotion. The Counties Code instead only provides for a

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<sup>137</sup> 65 ILCS 5/10-2.1-10.

<sup>138</sup> 65 ILCS 5/10-2.1-11.

<sup>139</sup> 65 ILCS 5/10-2.1-6(a).

<sup>140</sup> 50 ILCS 742/1.

<sup>141</sup> 50 ILCS 742/5.

<sup>142</sup> 50 ILCS 742/55.

<sup>143</sup> 55 ILCS 5/3-14021.

limited veterans preference in Cook County.<sup>144</sup> Only persons who were engaged in active military service during World War II and the Korean Conflict, and who were honorably discharged, or who are now or have been members on inactive or reserve duty in such military or naval service are eligible to receive preference in entrance and promotional examinations.

### **Cook County Sheriff's Department**

Finally, under Division 3-7 of the Counties Code pertaining to the Cook County Sheriff's Merit Board, the statute provides for a general veterans preference in the appointment of deputy sheriffs in the police department, full-time deputy sheriffs not employed as county police officers or county corrections officers and employees in the Department of Corrections. "Preference shall be given in such appointments to persons who have honorably served in the military or naval services of the United States."<sup>145</sup>

## **4. Preference in Fire Protection Districts<sup>146</sup>**

Individuals who were engaged in U.S. military service for a period of at least one year of active duty and who were honorably discharged, or who are now or have been members on inactive or reserve duty in such military or naval service, will receive 5 preference points and be preferred for appointment to offices, positions and places of employment in a fire department of a fire protection district.<sup>147</sup> Employees who meet the criteria above will also be preferred for promotional appointments of the fire department in such fire protection district.<sup>148</sup>

## **5. Preference in Illinois Park Districts<sup>149</sup>**

Individuals who were engaged in active military service during World War II, the Korean Conflict, or the Vietnam War and who were honorably discharged, or who are now or have been members on inactive or reserve duty in such military or naval service, will receive 5 preference points and be preferred for appointment to employment in the classified service of the park district.

The Civil Service Board will give preference points to the final grade average on any promotional examination taken by eligible veterans whose names appear on the promotional-eligible registers. Eligible veterans will receive as the result of any promotional examination seven-tenths of one point for each six months or fraction thereof of active military or naval service, not exceeding 30 months. No person shall receive the preference for a promotional appointment granted by the Park System Civil Service Act after he or she has received one promotion from an eligible list on which the individual was allowed such preference.

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<sup>144</sup> But note, those counties which have established a county police department merit board or merit commission for sheriff's personnel may give veterans preference to persons who have honorably served in the military or naval services of the United States. 55 ILCS 5/3-8010.

<sup>145</sup> 55 ILCS 5/3-7008.

<sup>146</sup> Fire Protection District Act, 70 ILCS 705/ 00.1 *et seq.*

<sup>147</sup> 70 ILCS 705/16.08a(a).

<sup>148</sup> 70 ILCS 705/16.08a(c).

<sup>149</sup> Park District Civil Service Act, 70 ILCS 1210/29a.

## 6. Illinois Veterans' Private Employment Preference Law

### General Concepts/Introduction

The Veterans Preference in Private Employment Act allows a “permissive preference in private employment for certain veterans.” In other words, the law authorizes private employers, if they so choose, to set up preferential veterans hiring, promoting, or retention preference policies.<sup>150</sup>

### Definitions<sup>151</sup>

**Armed Forces of the United States.** This “Armed Forces of the United States” is defined as “the United States Army, Marine Corps, Navy, Air Force, and Coast Guard, or the reserve component of any of those, and includes the Illinois National Guard.”

**Private Employer.** The term private employer is defined very broadly. Under this law, a “private employer” means any non-public sole proprietor, corporation, partnership, limited liability company, or other private, non-public entity employing one or more employees within Illinois.

**Veteran.** The Act defines the term “veteran” more broadly than many other programs. One qualifies as a veteran under the Act if he or she meets one or more of the following requirements:

1. **180 Days of Active Duty Service.** The individual served on active duty with the Armed Forces of the United States for more than 180 days and was discharged or released from such service under conditions *other* than dishonorable; **OR**
2. **Service-Connected Disability Discharge.** The individual was discharged or released from active duty with the Armed Forces of the United States due to a service-connected disability; **OR**
3. **Illinois National Guard Service Members.** The individual “is a member of the Illinois National Guard who has never been deployed but separated under conditions other than dishonorable as noted on the individual’s NGB-22 discharge form.”

### Requirements

The law authorizes the creation of such policies on condition that the following occurs:

1. **Written Policy.** The veterans preference policy must be in writing; **AND**
2. **Public Posting.** The veterans preference policy must be posted publicly by the private employer at the place of employment or on any website maintained by the private employer; **AND**
3. **Job Application Notice of Policy.** The private employer’s job application informs all applicants of the veterans’ preference employment policy and where the policy may be obtained; **AND**
4. **Uniform Implementation of the Policy.** The private employer applies the veterans’ preference employment policy uniformly for all employment decisions regarding the hiring or promotion of veterans or the retention of veterans during a reduction in force.

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<sup>150</sup> 330 ILCS 56/1 *et seq.*

<sup>151</sup> 330 ILCS 56/10.

## **Verification of Eligibility**

An employer is entitled to verify that an applicant qualifies for preferential treatment under the policy pursuant to the Act. Accordingly, the employer “may require and rely on an applicant’s or employee’s Department of Defense DD214/DD215 forms or their predecessor or successor forms, an applicant’s or employee’s NGB-22 discharge form or its predecessor or successor forms (if a member of the National Guard), and a U.S. Department of Veterans Affairs award letter (if the applicant or employee is claiming a service-connected disability) to establish eligibility for such policy.”<sup>152</sup>

## **Veterans Private Employment Preferences and the Human Rights Act**

The Illinois Human Rights Act clarifies that such authorized policies are exempt from treatment as unlawful discriminatory practices. The Illinois Human Rights Act states:

Veterans. Giving preferential treatment to veterans and their relatives as required by the laws or regulations of the United States or this State or a unit of local government, or pursuant to a private employer’s voluntary veterans’ preference employment policy authorized by the Veterans Preference in Private Employment Act.<sup>153</sup>

# **D. Unemployment Compensation**

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## **1. Unemployment Compensation for Former Service Members**

A service member separating from active duty may qualify for unemployment compensation if unable to find a new job. The Unemployment Compensation for Ex-servicemembers (UCX) program provides for the payment of unemployment compensation to eligible ex-service members separated from the military service.<sup>154</sup> The UCX regulations for the purpose of providing unemployment compensation to ex-service members are codified at 20 C.F.R. § 614.

A former service member is eligible to receive unemployment compensation if they completed a full term of active service in the armed forces and their discharge or release is, at a minimum, under honorable conditions.<sup>155</sup> A former service member discharged or released prior to completing their first full term of active service can still be eligible to receive unemployment compensation if they were separated (a) for the convenience of the government under an early release program; (b) because of medical disqualification, pregnancy, parenthood or service-incurred injury or disability; (c) because of hardship; and (d) because of personality disorder or inaptitude, but only if the service was continuous for 365 days or more.<sup>156</sup>

For benefit purposes, a former service member’s wages are determined on the basis of their pay grade on separation, using a schedule issued by the Department of Labor which specifies the

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<sup>152</sup> 330 ILCS 56/20.

<sup>153</sup> 775 ILCS 5/2-104(A)(2).

<sup>154</sup> 5 U.S.C. §§ 8521-8523.

<sup>155</sup> 5 U.S.C. § 8521(a)(1)(A-B); 20 C.F.R. § 614.2(g)(1-2).

<sup>156</sup> 5 U.S.C. § 8521(a)(1)(B)(ii)(I-IV); 20 C.F.R. § 614.2(g)(2)(ii)(A-D).

applicable remuneration for each pay grade.<sup>157</sup> The receipt of certain educational benefits under chapter 35 of Title 38 of the United States Code will affect eligibility for unemployment compensation.<sup>158</sup>

The administration of the UCX program is handled by the states as agents of the federal government through agreements with the Secretary of the Department Labor.<sup>159</sup> A former service member can apply for UCX benefits in the state in which they are searching for employment, and receipt of benefits can be provided by only that state.<sup>160</sup>

Since administration of the UCX program is handled by the states, the claims of former service members are subject to the same eligibility and disqualification provisions as other individuals claiming benefits under the state's unemployment insurance law, including rights to hearing and appeal.<sup>161</sup> To apply for unemployment compensation, a former service member must bring a Certificate of Release or Discharge from Active Duty (DD Form 214), a Social Security Card and a civilian and military job history or résumé. Additional information on this benefit is available on the website of the Illinois Department of Employment Security.

## 2. Unemployment Compensation for Military Spouses

As a general rule, unemployment compensation is not available to individuals who have left employment voluntarily without good cause.<sup>162</sup> Military spouses are often faced with having to leave employment to follow a spouse who was reassigned duty station. That choice cannot be labeled wholly voluntary. Relatively few states have explicit provisions, which accurately regard military spouses' loss of employment upon transfer as involuntary, but Illinois is one such state. In Illinois, military spouses are potentially eligible for unemployment if they voluntarily leave employment to accompany a reassigned military spouse.<sup>163</sup> Additionally, an employer's account shall not be charged for any benefits paid out to the individual who leaves to accompany a spouse reassigned from one military assignment to another.<sup>164</sup>

## E. Vacancies in Elected Positions Due to Military Service

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Illinois law provides in some instances statutory guidance concerning the temporary vacancy of certain elected offices due to the elected official entering active military service. County clerks (55 ILCS 5/3-2011); county coroners (55 ILCS 5/3-3038); county sheriffs (55 ILCS 5/3-6031); and county treasurers (55 ILCS 5/3-10020) are a few such examples.

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<sup>157</sup> 5 U.S.C. § 8521(a)(2).

<sup>158</sup> 5 U.S.C. § 8525.

<sup>159</sup> See 5 U.S.C. § 8502.

<sup>160</sup> See 5 U.S.C. § 8504; 20 C.F.R. § 614.8.

<sup>161</sup> See 20 C.F.R. § 614.7.

<sup>162</sup> See 820 ILCS 405/601(A).

<sup>163</sup> 820 ILCS 405/601(B)(7).

<sup>164</sup> *Id.*

## **F. Miscellaneous Veteran Employment Laws**

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### **1. Substitution of Military Experience for Associate's or Bachelor's Degree for Police Applicants**

A requirement under Illinois law that a police applicant possess an associate's degree will be waived if (1) the applicant has served for 24 months of honorable active duty in the U.S. Armed Forces and has not been discharged dishonorably or under circumstances other than honorable OR (2) the applicant has served for 180 days of active duty in the U.S. Armed Forces in combat duty recognized by the Department of Defense and has not been discharged dishonorably or under circumstances other than honorable.<sup>165</sup> A requirement under Illinois law that a police applicant possess a bachelor's degree will be waived if (1) the applicant has served for 36 months of honorable active duty in the U.S. Armed Forces and has not been discharged dishonorably or under circumstances other than honorable OR (2) the applicant has served for 180 days of active duty in the U.S. Armed Forces in combat duty recognized by the Department of Defense and has not been discharged dishonorably or under circumstances other than honorable.<sup>166</sup>

In regard to the waiver of collegiate education for applicants to the Illinois State Police, see above, under "Preference in State Employment: The Illinois State Police."

### **2. Commercial Driver's License (CDL) Testing for Veterans**

One requirement for issuance of a commercial driver's license (CDL) is that an applicant passes a skills test. An applicant who has prior military commercial motor vehicle (CMV) experience will not be required to take the skills test.<sup>167</sup> To be eligible for this waiver of the skills test, the applicant must (1) be or have been regularly employed within the last 90 days in a military position requiring operation of a CMV and (2) operating or operated a vehicle representative of the CMV the driver applicant operates or expects to operate, for at least the 2 years immediately preceding discharge from the military.<sup>168</sup> This exception is applicable to active duty military personnel; members of the military reserves; members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms); and active duty U.S. Coast Guard personnel. This exception is not applicable to U.S. Reserve technicians.<sup>169</sup> The waiver form can be found on the Federal Motor Carrier Safety Administration's Website.<sup>170</sup> The Illinois Secretary of State website also contains information on this waiver.<sup>171</sup>

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<sup>165</sup> 65 ILCS 5/10-2.1-6

<sup>166</sup> *Id.*

<sup>167</sup> 625 ILCS 5/6-508(b)

<sup>168</sup> 49 C.F.R. § 383.77

<sup>169</sup> 49 C.F.R. § 383.3

<sup>170</sup> <https://www.fmcsa.dot.gov/military-skills-test-waiver>

<sup>171</sup> [https://ilsos.gov/departments/drivers/drivers\\_license/CDL/cdl.html#military](https://ilsos.gov/departments/drivers/drivers_license/CDL/cdl.html#military)



### **3. Service Member Employer and Waiver of Unemployment Charges for Employees**

An employer is not chargeable for any benefit charges that result from the payment of benefits to an individual for any week of unemployment during the period that the employer's business is closed solely because of the entrance of the employer or one or more of the partners or officers of the employer, or the majority stockholder of the employer, into active duty in the Illinois National Guard or the Armed Forces of the United States.<sup>172</sup>

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<sup>172</sup> 820 ILCS 405/1502.1(D-1)

# Chapter 2: Consumer Laws

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The Servicemembers Civil Relief Act (SCRA), formerly at 50 U.S.C. app. §501-597b, and now recodified at 50 U.S.C. §§3901-4043, is designed to protect active duty military members, reservists who are in active federal service, and National Guardsmen who are in active federal service. Some of the benefits under the SCRA extend to dependents of active duty military members as well. An exhaustive analysis of the SCRA is beyond the scope of this Manual, but an overview of relevant provisions is helpful in understanding the protections of State law [namely, the Illinois Service Members Civil Relief Act (ISCRA) and its predecessor, the Illinois Patriot Plan].

The new Illinois Service Member Civil Relief Act (ISCRA), which incorporates by reference the provisions of the Illinois Patriot Plan, was enacted to supplement the SCRA see Section C. It serves to strengthen consumer protections for service members in military service, including members of the Illinois National Guard, and their spouses, by providing protections aimed to cover federal service as well as certain instances of State service. Through its passage, the State of Illinois continues to recognize the challenges faced by its Service Members in a world where the operating tempo of the U.S. Armed Forces has increased and substantial, sustained reliance is made on Reservists.

## A. Servicemembers Civil Relief Act (SCRA)

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### 1. General Concepts/Introduction

The federal Servicemembers Civil Relief Act [SCRA] is designed to protect active duty military members, reservists who are in active federal service, and National Guardsmen who are in active federal service. Some of the benefits under the SCRA extend to dependents of active duty military members as well. The purpose of the SCRA is to “protect those who have been obliged to drop their own affairs to take up the burdens of the nation.”<sup>1</sup> “Although the Act should be read liberally and afford generous protection to the service member, the protection does have its limits.”<sup>2</sup>

### 2. Organization of SCRA

The organization of the SCRA, now recodified at 50 U.S.C. §§3901-4043, is provided below:

- Subchapter I
  - General Provisions (50 U.S.C. §§3911-3920)
  - Persons Protected (50 U.S.C. §§3911, 3913)
  - Non-discrimination Provision (50 U.S.C. §3919)
- Subchapter II
  - General Relief (50 U.S.C. §§3931-3938a)

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<sup>1</sup> *Boone v. Lightner*, 319 U.S. 561, 575 (1943).

<sup>2</sup> *Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948).

- Default Judgments and Stays (50 U.S.C. §§3931, 3932, 3934, 3935)
- Statutes of Limitation (50 U.S.C. §3936)
- Maximum Rate of Interest (50 U.S.C. §3937)
- Child Custody (50 U.S.C. §3838)
- Subchapter III
  - Major Substantive Protections Against Evictions, Termination of Installment Contracts, Foreclosure on Mortgages and Termination of Leases by Lessees, Protection to Dependents (50 U.S.C. §§3951-3959)
- Subchapter IV
  - Life Insurance (50 U.S.C. §§3971-3979)
- Subchapter V
  - Taxes and Public Lands (50 U.S.C. §§3991-4001)
- Subchapter VI
  - Administrative Remedies (50 U.S.C. §§4011-4013)
- Subchapter VII
  - Further Relief (50 U.S.C. §§4021-4027)
- Subchapter VIII
  - Civil Liability (50 U.S.C. §§4041-4043)

The SCRA can provide many forms of relief, and below are some of the most commonly used forms.

### 3. Military Orders

Many of the rights under the SCRA hinge on the production of or reference to military orders. Even when they are produced, confusion may arise over the large variety of formats of such orders. Due to such frustrations, the Financial Services Roundtable, an organization representing banking institutions, created a form that can be signed by the unit commander and submitted by a service member to seek the relevant consumer protections under the SCRA. Although one can present this form by itself, the more advisable practice would be to submit it as a cover attachment to a service member's or organization's orders. This form is not required under the SCRA, but may serve the useful purpose of being readily identifiable and providing necessary, basic information. A copy of this form is included in the appendices.

### 4. Interest Rates Capped at 6%

Under the SCRA, a service member can cap the interest rate at 6% for all obligations entered into before beginning active duty if the military service *materially affects* his or her ability to meet the obligations. This can include interest rates on credit cards, mortgages,<sup>3</sup> and student loans, including Federal guaranteed student loans,<sup>4</sup> to name a few.

To qualify for the interest rate cap, the service member has to show that he or she is now on active duty, that the obligation or debt was incurred prior to entry onto active duty, and that military service materially affects the service member's ability to pay.

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<sup>3</sup> Creditors must cap interest rates on mortgages originated prior to military duty during the period of military service and **1 year thereafter**. 50 U.S.C. §3937.

<sup>4</sup> See the Higher Education Act, 20 U.S.C. §1078(d), which states that no provision of any federal or state law that limits the interest rate on a loan (**except for 50 U.S.C. §3937**) will apply to loans made under a government student loan program.

To begin the process, the service member needs to send a letter requesting relief under the SCRA, along with a copy of current military orders, to the creditor. If orders are not readily available at the time that the request is made to the creditor, a service member has 180 days after release from active duty to provide a copy of the orders.

The interest rate cap lasts for the duration of active-duty service. The interest rate cap will apply from the first date of active-duty service. Interest above 6% is permanently forgiven and cannot accrue or become due after service. The benefit covers debts jointly held with the service member's spouse. "Interest" includes service charges, renewal charges, fees and any other charges (except bona fide insurance).

## **5. Stay of Proceedings**

Service members served with a complaint indicating that they are being sued for some reason can obtain a stay or postponement of those proceedings if their military service materially affects the ability to proceed in the case. A stay can be used to stop the action altogether, or to hold up some phase of it. According to the SCRA, a service member can request a stay during any stage of the proceedings. The burden is on the service member to show that military service has materially affected the ability to appear in court.

## **6. Protection from Entry of Default Judgments**

A default judgment is entered against a party who has failed to defend against a claim that has been brought by another party. To obtain a default judgment, a plaintiff must file an affidavit (a signed, written declaration of fact sworn to under oath) stating that the defendant is not in the military service and has not requested a stay. If a service member is sued while on active duty and fails to respond, and, as a result, a default judgment is obtained, the service member can reopen the default judgment by taking several steps. First, the service member must show that the judgment was entered during military service or within 60 days after service. Second, the service member must write to the court requesting that the default judgment be reopened while still on active duty or within 90 days of leaving the service. Third, the service member must not have made any kind of appearance in court, through filing an answer or otherwise, prior to the default judgment being entered. Finally, the service member must indicate that military service prejudiced the ability to defend the case and show that a valid defense to the action exists.

## **7. Automobile Lease Terminations**

The SCRA allows service members to terminate pre-service automobile leases if they are called up for military service of 180 days or longer. Service members who sign automobile leases while on active-duty may be able to terminate an automobile lease if they are given orders for a permanent change of station outside the continental United States or to deploy with a military unit, or an individual in support of a military operation, for a period of 180 days or longer. Effective January 2021, the SCRA now allows service members to terminate leases if, while in military service, they execute a lease upon receipt of military orders as described above and, thereafter, receive a **stop movement order** issued by the Secretary concerned in response to a local, national or global emergency, effective for an indefinite period or for a period of not less than 30 days, which prevents the service member or their dependents from using that vehicle for personal or business transportation.

## 8. Tolling of Statutes of Limitation

The SCRA provides that the period of a person's military service cannot be counted against them in computing the period of limitations for the bringing of any civil legal action or proceeding.<sup>5</sup> A service member should note here that this SCRA provision is a double-edged sword. Although the provision allows them to file civil legal actions later, the same period of active duty military service is excluded in computing the period of limitations provided for the bringing of any civil legal action or proceeding against a member of the armed forces as well.

It is important to note that the protection of the SCRA "... applies to any judicial or administrative proceeding commenced in any court or agency in any jurisdiction subject to this Act."<sup>6</sup> The language of the SCRA defines the term "court" to specifically include "any political subdivision of a State," which would include a county, municipality, city, town, township, or other special district created pursuant to State law.<sup>7</sup> Accordingly, the SCRA protections apply with as much force to federal and state court proceedings as to proceedings of units of local government, including among others, zoning board hearings, property tax assessment hearings, and building code review hearings. This protection, however, does not apply to any period of limitation prescribed by or under U.S. internal revenue laws.

## 9. Housing Protections

### Introduction

The following are protections for service members relating to housing, mortgages and mortgage foreclosures.

### 6% interest rate<sup>8</sup>

As mentioned in section 3 above, the SCRA requires creditors to forgive interest in excess of six percent per year on any obligation or liability, incurred by a service member **prior to entry into military service**. The SCRA provides that the reduced interest rate of six percent will apply during the period of military service and **one year thereafter** for credit obligations secured by a mortgage, trust deed, or other security in the **nature of a mortgage**.

### Stay of Proceedings and Adjustment of Mortgage Obligation<sup>9</sup>

In the event a service member's ability to pay a mortgage obligation **which originated before the period of military service** is materially affected by military service, the SCRA permits a court to stay the proceedings or reduce the monthly payments and extend the length of time the service member has to pay the mortgage. This provision applies up to **90 days** after the end of military service.

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<sup>5</sup>50 U.S.C. §3936.

<sup>6</sup> 50 U.S.C. §3912(b) [formerly, 50 U.S.C. app. § 512(b)] (emphasis added).

<sup>7</sup> 50 U.S.C. §3911(5).

<sup>8</sup>50 U.S.C. §3937.

<sup>9</sup> 50 U.S.C. §3953(b).

## **Foreclosure Protections**<sup>10</sup>

The SCRA prohibits the sale, foreclosure, or seizure of a property based on a breach of a mortgage obligation **originated before the period of military service**, during the period of the service member's military service, or within **90 days after the end of the period of military service**.

*Exceptions:* If such sale, foreclosure, or seizure of property is pursuant to:

- a court order granted before such sale, foreclosure, or seizure with a return made and approved by the court; or
- a written waiver of rights and protections under the SCRA. Service members may waive their rights under the SCRA only by executing a written instrument during, or after, the period of active duty.

## **Eviction Protections**<sup>11</sup>

For a service member leasing a house or apartment with rent below a certain amount, the SCRA can protect him or her from eviction for a period of time, usually three months. The dwelling-place must be occupied by either the active duty member or his or her dependents, and the rent on the premises cannot exceed an amount that is published annually in the *Federal Register* by the Department of Defense.<sup>12</sup>

Additionally, the service member must show that military service materially affects his or her ability to pay rent. If a landlord continues to try to evict the military member, or does actually evict the member, he or she is subject to criminal sanctions such as fines or even imprisonment.

## **Residential Lease Terminations**<sup>13</sup>

The SCRA also allows service members who are just entering active duty service to lawfully terminate a lease without repercussions. To do this, the service member needs to show that the lease was entered into prior to the commencement of active duty service, or that the service member executed the lease while in military service but subsequently received orders for a permanent change of station (PCS) or for a deployment of at least 90 days. Effective January 2021, the SCRA now allows service members to terminate leases if, while in military service, they execute a lease upon receipt of military orders as described above and, thereafter, receive a **stop movement order** issued by the Secretary concerned in response to a local, national or global emergency, effective for an indefinite period or for a period of not less than 30 days, which prevents the service member or their dependents from occupying the lease for a residential, professional, business, agricultural or similar purpose.

To terminate a lease, the service member must provide written notice to the landlord along with a copy of the military orders to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee). (A sample of a written notice to terminate a rental property is included in the appendices.) Delivery of notice may be accomplished by (1) hand delivery; (2) private business carrier; or (3) placing the written notice in an envelope with sufficient postage and return receipt requested, and addressed as designated by the lessor (or the lessor's grantee) or to the lessor's agent (or the agent's grantee), and depositing the written notice in the U.S. mail.

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<sup>10</sup> 50 U.S.C. §3953(c).

<sup>11</sup>50 U.S.C. §3951.

<sup>12</sup> The CPI-adjusted maximum rental rate for 2021 is \$4,089.62.

<sup>13</sup>50 U.S.C. §3955.

The termination of a lease that provides for monthly payment of rent will occur 30 days after the first date on which the next rental payment is due and payable after the landlord receives proper written notice.

It is a federal crime (misdemeanor) to interfere with the exercise of this right to terminate a residential lease and related conduct. The SCRA specifically provides:

Any person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a servicemember or a servicemember's dependent who lawfully terminates a lease covered by this section, or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.<sup>14</sup>

## 10. Enhanced Mortgage Protections Pursuant to the Mortgage Servicing Agreement

On April 4, 2012 the U.S. Department of Justice (DOJ), the Department of Housing and Urban Development (HUD) and 49 state attorneys general including Illinois filed a consent judgment with **Bank of America Corporation, J.P. Morgan Chase & Co., Wells Fargo & Company, Citigroup Inc. and Ally Financial Inc.**, (“**Servicers**”) to resolve the banks’ violations of state and federal consumer protection laws, including past mortgage loan servicing and foreclosure abuses. The settlement also provided financial relief to borrowers harmed by bank fraud, establishes new protections for homeowners, and enhances protections for service members that go beyond those required by the SCRA. The enhanced protections are listed as follows:

- (1) Servicers must comply with the SCRA. Servicers must have a consultant review all known military foreclosures from January 1, 2009 to December 31, 2010, and provide monetary damages in compliance with the DOJ consent agreements with Countrywide<sup>15</sup> and Saxon Mortgage Services.<sup>16</sup>
- (2) SCRA eligibility determinations. Servicers must determine whether their service member borrowers are eligible for SCRA protections.
- (3) Required active duty service screenings. Bank or servicer must check through the Servicemembers Civil Relief Act (SCRA) website maintained by the Defense Manpower Data Center (DMDC) of the U.S. Department of Defense (DOD) to determine whether a troubled borrower is SCRA eligible not only at the time of default as required by the SCRA, but also in the following additional circumstances (beyond the requirements of the SCRA):
  - before a loan is referred for foreclosure;
  - within seven days of a foreclosure sale; and

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<sup>14</sup> 50 U.S.C. §3955(h).

<sup>15</sup> See BAC/Countrywide Consent Order.

<sup>16</sup> See Saxon Consent Order, 3:11-cv-111-F (USDC TX-ND), filed May 26, 2011.

- the later of promptly after a foreclosure sale and within three days before the regularly scheduled end of any redemption period.
- (4) Invoking SCRA rights. When invoking their rights under the SCRA, service members may provide their servicer with either military orders or a letter on official letterhead from the service member's commanding officer, including a contact number for verification, to demonstrate proof of active duty service.
  - (5) Notice requirements to delinquent service members. Servicers must notify service member borrowers who are 45 to 60 days delinquent the following:
    - they may be entitled to certain SCRA protections regarding the service member's interest rate and the risk of foreclosure;
    - counseling for covered service members is available at agencies such as Military OneSource, Armed Forces Legal Assistance (AFLA), and a HUD-certified housing counselor; and
    - a toll-free number they can call.
  - (6) Limitations on post-delinquency action. Servicers may not sell, foreclose, or seize the property of a service member borrower for defaulting on a mortgage obligation during or within nine months after, the period in which the service member is serving at a location more than 750 miles from the location of the secured property or outside of the United States and is eligible for Hostile Fire/Imminent Danger Pay.
    - Service members are protected under this provision regardless of whether the mortgage obligation was originated before or during the period of military service.
  - (7) Delinquency may not be required for short sales, etc. Servicers may not require service member borrowers to be delinquent to qualify for a short sale, loan modification, or other loss mitigation relief if the service member is experiencing financial hardship and is otherwise eligible for such loss mitigation.
  - (8) PCS moves and financial hardships. When determining whether a service member is suffering a financial hardship with regard to a short sale or deed in lieu, the bank/servicer shall take into account whether the service member has been ordered to relocate to a new duty station at least 75 miles away from his or her former home. With regard to a loan modification, the servicer shall consider as part of the hardship determination if the service member must relocate.
  - (9) No inaccurate reports to credit reporting agencies. Servicers may not make inaccurate reports to credit reporting agencies when a service member, who has not defaulted before relocating pursuant to a PCS, obtains a short sale, loan modification, or other loss mitigation relief.
  - (10) Blight Remediation. Servicers receive credit for donating repo properties to disabled service members or relatives of deceased service members.
  - (11) Short Sales/Portfolio Loan (HFI). Service members that qualify for SCRA benefits will be able to avail themselves of a special short sale program to allow them to move, pursuant to PCS orders, at least 75 miles away from their current home.



- (12) Deficiency Waivers. If an eligible service member qualifies for a short sale, the servicer shall waive deficiencies less than \$250,000.
- (13) Service Members in Combat Areas. For active duty service members in combat areas, servicers shall not sell or foreclose on their homes (unless there are investor limitations). This is an improvement on the SCRA which provides in Section 533 that a stay of a foreclosure or sale can only be requested if the mortgage debt was incurred prior to military service. Now those in combat areas can receive this protection regardless of when the debt was incurred.

## **B. Illinois Patriot Plan**

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### **1. General Concepts/Introduction**

Illinois is one of the most progressive states in terms of the benefits and protections that are afforded to members of the armed forces, both current and former. This is evident in the consumer protections extended to the citizen-soldiers of Illinois through the Illinois Patriot Plan, Public Act 94-635 (August 22, 2005).

### **2. Definitions (in use before the ISCRA)**

Prior to the effective date of the ISCRA, all Acts set forth in the Illinois Patriot Plan defined “service member” as “a member of the armed services or reserve forces of the United States or a member of the Illinois National Guard.” “Active duty” meant “active duty pursuant to an executive order of the President of the United States, an act of the Congress of the United States, or an order of the Governor.” However, these definitions have now been updated under the ISCRA (see below) to realign the language to better match current military usage and to allow, in certain instances, the applicability of these laws to instances of State Active Duty (SAD).

The Illinois Patriot Plan provides qualified service members with the following consumer protections which continue to exist even after the ISCRA became law.

### **3. Military Personnel Cellular Phone Contract Termination Act**

The Military Personnel Cellular Phone Contract Termination Act, created by the Illinois Patriot Plan, allows service members on active duty or their spouses to terminate phone contracts without penalty.<sup>17</sup> The phone contract must have been entered into on or after August 22, 2005, and it must have been executed by or on behalf of the service member who is deployed on active duty.<sup>18</sup>

The termination of a contract is not effective until 30 days after the service member who is deployed on active duty or the service member’s spouse does the following:

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<sup>17</sup> 815 ILCS 633/1, *et seq.*

<sup>18</sup> 815 ILCS 633/10.

- **Notice of Termination by Certified Mail:** The service member must give notice to the cellular telephone company of the service member's intention to terminate the cellular phone contract by certified mail, return receipt requested;
- **Copy of Military Orders:** The service member must provide the company with a copy of the military or gubernatorial orders calling the service member to active duty and of any orders further extending the service member's period of active duty; and
- **Return (or Written Promise to Return) of Unowned Cell Phone:** The service member must return the cellular phone to the company if the phone is not owned by the activated service member or agrees in writing to return the cellular phone as soon as practical after the deployment is completed.<sup>19</sup>

#### 4. Illinois Municipal Code and Public Utilities Act

Under the Public Utilities Act, no company or electric cooperative may stop gas or electricity from entering the residential premises of which a service member was a primary occupant immediately before the service member was deployed on active duty for nonpayment for gas or electricity supplied to the residential premises.<sup>20</sup> Similarly, under the Municipal Code, where utility service is supplied by a municipality, no municipality may stop gas or electricity from entering the residential premises of which a service member was a primary occupant immediately before the service member was deployed on active duty for nonpayment for gas or electricity supplied to the residential premises.<sup>21</sup>

To be eligible, the service member must provide the municipality, utility company, or electric cooperative with a copy of the consumer's military or gubernatorial orders either calling the consumer to active duty for a period in excess of 29 consecutive days and of any further extending the consumer's period of active duty.<sup>22</sup>

If the consumer has incurred any arrearages while the service member is serving on active duty, the company must allow the consumer a period of time equal to that of the consumer's active duty service to pay the arrearage upon the service member's return. The company must notify the consumer that if paying the arrearage presents a hardship, the consumer may request a longer period of time. If the arrearage is owed to a public utility company, the consumer may make a request to the Illinois Commerce Commission for assistance in obtaining a longer period.<sup>23</sup> The public utility company or electric cooperative shall not charge the consumer late payment fees or interest during the period of deployment or the repayment period.<sup>24</sup>

#### No Stoppage of Gas or Electricity by a Non-Municipal Public Utility (Updated)

Under the ISCRA (discussed more in detail below), the provision regarding non-municipal public utilities, like those concerning municipal public utilities, noted above, updates the Patriot Plan law's basic military terminology.<sup>25</sup> It also updates the provisions with the term "military service"

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<sup>19</sup> 815 ILCS 633/15.

<sup>20</sup> 220 ILCS 5/8-201.5(b); 330 ILCS 63/930 (amendatory provisions; text omitted); See P.A. 97-0913, § 930.

<sup>21</sup> 65 ILCS 5/11-117-12.2; ; 330 ILCS 63/920 (amendatory provisions; text omitted); See P.A. 97-0913, § 920.

<sup>22</sup> 65 ILCS 5/11-117-12.2 (d); 220 ILCS 8-201.5(c).

<sup>23</sup> 65 ILCS 5/11-117-12.2(c); 220 ILCS 5/8-201.5(d).

<sup>24</sup> 220 ILCS 5/8-201.5(d).

<sup>25</sup> See also 220 ILCS 5/8-206(I)(Provision stops a public utility from turning off a service member's or veteran's electricity or gas between December 1 and March 31 due to non-payment.).

and the requirement of in excess of 29 days of consecutive service, proof of which (i.e., a copy of the orders) must be provided to the utility.<sup>26</sup>

The provision concerning non-municipal public utilities differs from that concerning public ones in that it eliminates the term “primary occupant” in favor of extending the right to the “primary residence of a service member.” Extra language was also inserted to allow for cost recoupment from the service member-customer under certain circumstances. In the case of not-for-profit cooperatives, the service member must also show that his or her ability to pay the public utility has been *materially affected* by the military service. Finally, the provision concerning non-municipal public utilities includes a new paragraph that allows the public utility to recover the uncollectible costs it incurs in complying with the Section’s requirements either through an automatic adjustment clause tariff or consistent with rules established by the Illinois Commerce Commission.

## 5. Illinois Insurance Code

The Illinois Patriot Plan amended the Illinois Insurance Code to forbid forfeiture of life insurance policies for nonpayment of premiums.<sup>27</sup> The amendment provides that an individual life insurance policy insuring the life of a service member shall not lapse or be forfeited for the nonpayment of premiums during the service member’s period of military service in excess of 29 consecutive days or during the two-year period subsequent to the end of that service.<sup>28</sup>

To be eligible for this treatment, a service member’s life insurance policy must have been in force for at least 180 days, and have been brought within the Servicemembers Civil Relief Act, 50 U.S.C. §§3901-4043 (containing rules for the mandatory reinstatement of lapsed life insurance).<sup>29</sup>

The insured service member must provide the life insurance company with a copy of the insured’s military or gubernatorial orders either calling the insured to active duty or further extending the insured’s period of active duty.<sup>30</sup>

This provision does not apply to policies that have lapsed before the service member was deployed, nor does it limit a life insurance company’s enforcement of provisions in the insured’s policy relating to naval or military service in time of war.<sup>31</sup>

## 6. Eviction Proceedings Under the Code of Civil Procedure

The Illinois Patriot Plan added new §9-107.10 to the Code of Civil Procedure to allow courts to delay eviction proceedings for 90 days and to adjust rental obligations.<sup>32</sup> The new section provides that in an action for possession of residential premises of a tenant or mobile home park resident who is a service member deployed on active duty or of any member of the service member’s immediate family who resides with him or her, the court may stay the proceedings for a period of 90 days or adjust the rental obligation to preserve the parties’ interests.<sup>33</sup>

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<sup>26</sup> 330 ILCS 63/930 (amendatory provisions; text omitted); See Public Act 97-0913, §930.

<sup>27</sup> 215 ILCS 5/224.05.

<sup>28</sup> 215 ILCS 5/224.05(c).

<sup>29</sup> 215 ILCS 5/224.05(a).

<sup>30</sup> 215 ILCS 5/224.05(d).

<sup>31</sup> 215 ILCS 5/224.05(b), 5/224.05(e).

<sup>32</sup> 735 ILCS 5/9-107.10.

<sup>33</sup> 735 ILCS 5/9-107.10(b).

To be eligible under this section, the service member or a member of his or her family who resides with the service member must provide the landlord or mobile home park operator with a copy of the tenant's or resident's military or gubernatorial orders either calling the service member to active duty or further extending the service member's period of active duty.<sup>34</sup>

## **7. Interest Act**

The Illinois Patriot Plan amended the Interest Act to prevent creditors from charging interest exceeding six percent annually.<sup>35</sup> Section 4.05 provides that no creditor in connection with an obligation entered into on or after August 22, 2005, shall charge or collect from a service member who is deployed on active duty, or the spouse of that service member, interest or finance charges exceeding six percent per annum during the period that the service member is deployed on active duty.<sup>36</sup> Interest or finance charges, including service and renewal charges, in excess of six percent per annum that otherwise would be incurred but for the prohibition in this Act are forgiven.<sup>37</sup>

The amount of any periodic payment due from a deployed service member or the service member's spouse under the terms of the obligation shall be reduced by the amount of the interest and finance charges forgiven that is allocable to the period for which the periodic payment is made.<sup>38</sup>

To be eligible, the service member or spouse must provide the creditor with written notice and a copy of the military or gubernatorial orders calling the service member to active duty in excess of 29 consecutive days, or further extending the service member's period of active duty, no later than 180 days after termination of or release from active duty.<sup>39</sup>

Creditors may be relieved from this rule if, in the opinion of the court, the service member's payment is not materially affected by the service member's active duty.<sup>40</sup>

This interest limitation applies to any retail installment sales contract, other contract for the purchase of goods or services, or bond, bill, note, or other instrument of writing for the payment of money arising out of a contract or other transaction for the purchase of goods or services.<sup>41</sup>

## **8. Motor Vehicle Leasing Act**

The Illinois Patriot Plan amended the Motor Vehicle Leasing Act to allow service members to terminate their motor vehicle leases without penalty.<sup>42</sup> The Act provides that any service member who is deployed on active duty for a period of not less than 180 days, or the spouse of that service member, may terminate any motor vehicle lease entered into on or after August 22, 2005, and

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<sup>34</sup> 735 ILCS 5/9-107.10(c).

<sup>35</sup> 815 ILCS 205/4.05.

<sup>36</sup> 815 ILCS 205/4.05(b).

<sup>37</sup> 815 ILCS 205/4.05(c).

<sup>38</sup> 815 ILCS 205/4.05(d).

<sup>39</sup> 815 ILCS 205/4.05(e).

<sup>40</sup> 815 ILCS 205/4.05(g).

<sup>41</sup> 815 ILCS 205/4.05(a).

<sup>42</sup> 815 ILCS 636/37.

executed by or on behalf of the service member who is deployed on active duty.<sup>43</sup> “Motor vehicle” means “any automobile, car minivan, passenger van, sport utility vehicle, pickup truck, or other self-propelled vehicle not operated or driven on fixed rails or track.”<sup>44</sup>

The lease is effectively terminated when notice of termination is delivered to the lessor along with a copy of the lessee’s military or gubernatorial orders either calling the lessee to active duty or further extending the lessee’s period of active duty. The lessee must return the leased vehicle not later than 15 days after delivery of the written notice.<sup>45</sup>

Lease amounts unpaid for the period preceding the effective date of the lease’s termination shall be paid on a prorated basis.<sup>46</sup> The lessor may not impose an early termination fee, but the service member must pay all other reasonable charges under the terms of the lease. Id. The lessor must refund to the lessee lease amounts paid in advance for a period after the effective date of the lease’s termination within 30 days after the effective date of the lease’s termination.<sup>47</sup>

A violation of the termination of lease provisions for military personnel in military service under the Motor Vehicle Leasing Act is a civil rights violation under the Illinois Human Rights Act. Where there is evidence of a pattern or practice of such violations, the Office of the Illinois Attorney General may investigate and may initiate an enforcement action.

## **C. Illinois Service Members Civil Relief Act (ISCRA)**

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### **1. Passage of the New Act**

On August 9, 2012, the Governor signed into law the first major revision of Illinois consumer law designed to protect service members and their families since the passage of the Illinois Patriot Plan. This law, Public Act 97-0913, creates the Illinois Service Members Civil Relief Act (ISCRA), effective January 1, 2013.<sup>48</sup> A breakdown of the new statute’s structure and content follows.

### **2. New Definitions**

As a starting point, one should note that the ISCRA revises a couple of key definitions used in the Patriot Plan and carried forward to the newer rights of the ISCRA. The first term defined is “service member.” The second term defined is “military service.” The revision of “military service” represents an important point of the ISCRA: the extension of rights to cover certain periods of State Active Duty (SAD) that are not protected under the federal SCRA or prior State law under the Patriot Plan.

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<sup>43</sup> 815 ILCS 636/37(b).

<sup>44</sup> 815 ILCS 636/37(a).

<sup>45</sup> 815 ILCS 636/37(c).

<sup>46</sup> 815 ILCS 636/37(d).

<sup>47</sup> 815 ILCS 636/37(e).

<sup>48</sup> 330 ILCS 63/1, *et seq.*

## **Service Member**

The ISCRA defines “service member” as “a resident of Illinois who is a member of any component of the U.S. Armed Forces or the National Guard of any state, the District of Columbia, a commonwealth, or a territory of the United States.”<sup>49</sup>

This definition under the ISCRA is narrower than the one found under the federal SCRA. Under the SCRA, the term means a member of the uniformed services. Federal law defines the uniformed services as the armed forces (Army, Navy, Air Force, Marine Corps, and Coast Guard) plus the commissioned corps of the National Oceanic and Atmospheric Administration [NOAA] and the commissioned corps of the Public Health Service [PHS]. However, under the ISCRA, the term service member means, essentially, a member of the armed forces. This difference translates into a lack of coverage under State law (the ISCRA) for members of the commissioned corps of NOAA and members of the commissioned corps of the PHS.

## **Military Service**

The other key definition in the SMCRA is “military service.” “‘Military service’ means any full-time training or duty, no matter how described under federal or State law, for which a service member is ordered to report by the President, governor of a state, commonwealth, or territory of the United States, or other appropriate military authority.”<sup>50</sup>

Here, unlike the case for the definition of “service member,” the ISCRA is more expansive than the federal SCRA in the definition of “military service.” The point to note is that the State definition covers certain instances of active duty service while in Title 32 or State Active Duty status beyond previously included periods of federal active duty service under the Patriot Plan (and the federal SCRA’s limitation to federal active duty).

### **3. References to Existing Patriot Plan Law**

The next part of the ISCRA focuses on reasserting the still-existing provisions of the Illinois Patriot Plan. Consider these references as a road map to much of what existed before the ISCRA.

Also, in this second part are thrown in a few additional references to rights that were passed between the passage of the Patriot Plan and that of the ISCRA.

### **4. References to Existing Law Outside the Patriot Plan**

In addition to the references and updates to Patriot Plan law, the Illinois Service Member Civil Relief Act (ISCRA), P.A. 97-913, effective January 1, 2013, also refers to and makes technical amendments to a couple of miscellaneous protections found in the Illinois Military Code. The ISCRA made both of the following provisions “*per se*” violations of the Illinois Human Rights Act (that is, a violation of either of the following provisions is a violation of the Illinois Human Rights Act.). The following paragraphs give a brief description of the pre-existing rights themselves.

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<sup>49</sup> 330 ILCS 63/10.

<sup>50</sup> 330 ILCS 63/10.

## **Stay of Prosecution**

During the period of military service plus 14 days after a period of military service in excess of 29 days, a court having jurisdiction over the enforcement of any civil obligation or liability, the prosecution of any civil suit or proceeding, or the entry or enforcement of any civil order, writ, judgment, or decree may stay, postpone, or suspend the matter if the court finds that the member's "failure to meet the obligation is the direct result of that period of military service."<sup>51</sup>

## **Tuition Refund**

A service member has the ability to obtain a refund of school tuition if he or she is unable to attend school for a period of seven days or more as a result of service. Withdrawal from a course or courses shall not impact upon the service member's final grade point average. If any service member, who has been enrolled in any Illinois public university, college, or community college, is unable to process his or her enrollment for the upcoming term, he or she will have late penalties and or charges set aside, including late processing fees for books, lab fees, and all items that were not in place because the service member was engaged in military service and was unable to enroll in the courses at the appropriate time.<sup>52</sup>

A violation of the sections pertaining to stay of prosecution and tuition refund constitutes a civil rights violation under the Illinois Human Rights Act. All proceeds from the collection of any civil penalty imposed under these sections will be deposited into the Illinois Military Family Relief Fund.

<sup>53</sup>

## **5. New Rights Under the ISCRA**

The heart of the ISCRA, the final part, focuses on asserting new rights and amendments to existing law. A summary of these new rights follows.

### **Stay of Contested Administrative Law Proceedings**

The ISCRA provides a new right to service members performing military service regarding administrative legal proceedings. Where the service member is a named party in a "contested case," he or she has a right to request a stay of the proceedings if the military service prevents his or her attendance. The request must be made within the period of military service plus fourteen days after the end of that military service. Additionally, there are several criteria that must be met to be eligible:

- **Period of Service Greater Than 29 Consecutive Days:** The service member must prove that the period of military service is greater than 29 consecutive days.
- **Material Effect:** The service member must show that the military service has *materially affected* his or her ability to participate in the hearing.
- **Commanding Officer's Verification:** The service member must submit a letter to the administrative law judge (ALJ) that verifies the service member is indeed unavailable due to military service and that military leave is not currently an option.

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<sup>51</sup> 20 ILCS 1805/30.25.

<sup>52</sup> 20 ILCS 1805/30.30.

<sup>53</sup> 20 ILCS 1805/30.25.

- **Proposed New Hearing Date:** The service member must provide the ALJ with an approximate date of availability.

If the above criteria are met, the ISCRA requires that the 90-day stay be granted. Any additional stays are at the discretion of the ALJ.

### **Administrative Deadline Extensions**

The ISCRA provides new authority to the various State department directors under the Governor to extend deadlines for service members who have entered military service for a period of greater than 29 consecutive days. Under Section 905 of the ISCRA (which amends the Civil Administrative Code of Illinois by adding a new provision, 20 ILCS 5/5-715, “Deadline extensions for service members,” the maximum period of time of any such extension under this new provision is twice the length of time of the service member’s required military service. Thus, where a department has put in place such maximum extensions, a service member who is ordered to State Active duty for disaster relief for two months of consecutive military service would be entitled to a four months extension on the applicable administrative deadline.

### **Right to Reschedule Exams Missed Due to Military Service**

The ISCRA amends the Service Member’s Employment Tenure Act (SMETA) with the addition of new text that provides for the right to reschedule an exam at any “institution of higher learning,” a defined term under the Illinois Higher Education Student Assistance Act, when a service member is called away to military service.<sup>54</sup> This right applies to a wider set of institutions than the existing right to a refund of tuition from any Illinois public university, college or community college, under certain circumstances due to military service.

Where military service prevents the service member from sitting for the exam, the new provision directs that his or her absence be excused. The provision further directs that faculty and administrative officials need to make an equivalent opportunity available to the service member to retake the exam or exams.

### **Relief from Default Judgments**

Section 940 of the ISCRA amends the Code of Civil Procedure to provide service members a right to relief from default judgments under certain conditions.<sup>55</sup> After thirty days from the entry by default of a final order or judgment against a service member who has entered military service, that service member may file a petition for relief from and vacation of that default judgment or order. Such a procedure allows a service member to undo the default that would likely not have occurred but for his or her military service, and have the opportunity to defend the action on its merits. There are four basic eligibility criteria:

1. **No Prior Appearance:** A service member must not have appeared in the case;
2. **Material Affect:** The service member’s military service must have *materially affected* his or her ability to defend the case;

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<sup>54</sup> 330 ILCS 63/935 (amendatory provisions; text omitted); See Public Act 97-0913, §935. Servicemember’s Employment Tenure Act, 330 ILCS 60/1, et seq. Higher Education Student Assistance Act, 110 ILCS 947/1, et seq. (defining “Institution of Higher Learning” at Section 947/10).

<sup>55</sup> 330 ILCS 63/940 (amendatory provisions; text omitted); See Public Act 97-0913, §940 (amending 735 ILCS 5/9-107.10, 5/9-206, and adding 735 ILCS 5/2-1401.1 and 5/15-1501.6).



3. **Meritorious or Legal Defense:** The service member must have a meritorious or legal defense to the action; and
4. **Filing of Petition within 90 Days from Release:** The service member must file the petition, supported by affidavit (“or other appropriate showing”) for relief within ninety (90) days after release from active duty [REFRAD]. (The 90-day deadline does not count any time where the service member was under legal disability or duress or any time where this basis for relief has been fraudulently concealed.)

### **Relief from Mortgage Foreclosure Proceedings**

As noted above, the SCRA and other substantial rights may apply in some circumstances to cases involving mortgage foreclosure issues. Here, however, the SMCRA adds to the protections by providing a State right that applies even in some cases of State Active Duty. Section 940 amends the Illinois Code of Civil Procedure to afford protection to those service members who possess a mortgage on real property which was created before entering into the period of military service for a period over 29 days. The service member must still be obligated under the mortgage.

Where his or her ability to make the required payments or his or her ability to defend the foreclosure action is *materially affected* by military service, the Court has a couple of options, assuming the service member provides copies of the orders establishing the military service. The court can either:

1. **Stay the Proceedings for 90 Days:** The court may stay the proceedings for up to ninety days after the return from military service (the time period can be modified where justice and equity require); or
2. **Adjust the Obligation:** The court may adjust the obligation under the mortgage agreement by lowering the monthly payments up to ninety days after return from military service and extending the term of the mortgage.

A violation of this right is a civil rights violation under the Illinois Human Rights Act. Any proceeds collected as a civil penalty under the IHRA must be deposited into the Illinois Military Family Relief Fund.

### **Right to Terminate Lease**

Section 945 added a new provision to the Landlord and Tenant Act which provides for a right to terminate a property lease (a lease for a mobile home lot, residential premises, non-residential premises, or farm or agricultural real property) under two different scenarios.<sup>56</sup>

In the first case, a service member-tenant (or any member of the service member-tenant’s family who resides with the tenant at the leased property) has a right to terminate such a lease if he or she signed the lease *before* entry into military service for a period over twenty-nine (29) consecutive days.

In the second case, whether the lease was signed before or during military service is not relevant. In this case, if the service member receives orders for a transfer of duty station, known as a “permanent change of station” or PCS move, or for a deployment of ninety (90) days or more, the service member may also terminate the lease.

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<sup>56</sup> See 765 ILCS 705/16

In both cases, the service member must provide the landlord or mobile park operator with a copy of the military orders. One is well advised to either mail a copy of these orders by certified mail with return receipt, or to obtain a receipt from the landlord or the landlord's agent confirming receipt of these military orders. Additionally, although this State law provision does not require separate written notice, federal provisions in the SCRA do discuss such written notice. Accordingly, one also would do well to provide a separate cover letter that states the service member is invoking State and/or federal law to end the lease, providing information on when the service member will vacate the premises. (See appendices for some sample letters.)

The effective date of the termination is thirty (30) days after service or, if the rent is paid monthly, 30 days after the next monthly rent payment is due. If there were any advance rent payments, the landlord must return any unearned portions. The landlord must also return any security deposit paid, except to the extent that there are actual damages or repairs to be paid from the security deposit as provided in the lease agreement.<sup>57</sup>

Finally, a landlord who fails to accept a service member's termination of a lease under this provision commits a civil rights violation under the Illinois Human Rights Act. In other words, a violation of 765 ILCS 705/16 is a (*per se*) violation of the Illinois Human Rights Act. Apart from the ability of an individual to make a complaint directly to the Illinois Human Rights Commission (IHRC), the Office of the Illinois Attorney General may investigate and prosecute "patterns and practices" of such a violation.

### **Relief Concerning Retail Installment Contract Defaults**

Section 965 adds a new section to the Retail Installment Sales Act.<sup>58</sup> This provision provides certain protections to service members called to military service who entered into a retail installment sales contract before entering such service. If the service member's ability to pay the retail installment sales contract has been materially affected by the military service and a copy of the relevant orders documenting military service in excess of twenty-nine (29) consecutive days is provided, he or she may petition for relief in court. A court, in its turn, may do any of the following:

1. **Enter a 90-Day Post-Service Stay of Repossession:** The court may stay any repossession of goods for a period up to ninety (90) days after the service member returns from such military service (with discretion to modify the time period of the post-service stay where justice and equity require);
2. **Adjust the Payment Terms of the Contract:** The court may adjust the obligation under the retail installment contract by reducing the monthly payments and extending the duration of the contract (provided the adjustment preserves the interest of all parties to the contract); and/or
3. **Enter a General Stay of Repossession or Disposition:** The court may (1) stay the repossession of the goods or collateral or (2) stay the disposition of repossessed goods or collateral.

A violation of this right is a civil rights violation under the Illinois Human Rights Act. Any proceeds collected as a civil penalty under the IHRA must be deposited into the Illinois Military Family Relief Fund.

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<sup>57</sup> 765 ILCS 705/16(d).

<sup>58</sup> 330 ILCS 63/965 (amendatory provisions; text omitted); See Public Act 97-0913, §965 (adding new 815 ILCS 405/26.5).

## D. Select Consumer Protections Not Found in the ISCRA or the Illinois Patriot Plan

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### 1. General Concepts/Introduction

Recalling that the purpose of this publication is to educate the general public of the overall framework of consumer protections for the military, one must not forget to seek private legal counsel for the interpretation of any of the enclosed provisions as well as the potential applicability of other provisions not contained in this publication. Although the SCRA and ISCRA attempt to be and are cornerstones of such protections at the federal and state level, respectively, they cannot and are not in all cases “the end of the story.” In regard to Illinois law, a few notable provisions not contained in either the Patriot Plan or the new ISCRA are listed below.

### 2. Service Member Residential Property Act

#### Introduction

Several years after the passage of the Illinois Patriot Plan, but before the passage of the new ISCRA, P.A. 96-1400 created the Service Member Residential Property Act, effective July 29, 2010.<sup>59</sup> Like the new provision of the SMCRA, this Act concerns termination of service members’ residential property leases under certain conditions. The reader is advised to seek legal counsel in determining the applicability of either or both of these laws.

#### Definitions

##### **Military Service**

The Act, being outside the ISCRA or its predecessor, the Patriot Plan, uses its own definitions of “military service” and “service member.” By its definition of military service, the Act appears to cover federal active duty service for a period of not less than 180 days or *any* time period of active duty with the State of Illinois under either orders of the President or the Governor. Without using the term, the Act defines “military service” essentially as service in the Armed Forces of the United States, including voluntary enlistments and induction by draft or conscription. This definition and the following one, service member, apply to both voluntary enlistment and to induction into service by draft or conscription.

##### **Service Member**

“Service member” is defined as follows: “Service member’ means and includes the following persons and no others: All members of the Army of the United States, the United States Navy, the Marine Corps, the Air Force, the Coast Guard and all members of the State Militia called into the service or training of the United States of America or of this State.”<sup>60</sup>

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<sup>59</sup> 330 ILCS 62/5-1, *et seq.*

<sup>60</sup> 330 ILCS 62/5-5.

### **Type of Property Covered**

The Act applies to a lessee of residential premises occupied, or intended to be occupied, by a service member or a service member's dependents.

### **Right to Terminate Residential Property Lease**

The Act, similar to the newer provision in the ISCRA, provides coverage in two basic scenarios. First, the Act allows for lease termination in the case where, the service member (or somebody on behalf of the service member) signs the lease, and then he or she is called to active duty. Second, in the case where the service member is already in military service (and has signed a lease while in service), he or she may terminate the lease in either of the two following cases: (1) he or she receives military orders for a "permanent change of station" (a PCS move); or (2) he or she receives military orders to deploy with a unit or as an individual in support of a military operation, for a period of not less than 90 days.<sup>61</sup>

### **Timing of Termination**

The lessee on such a lease as described above may end the lease any time after either of two dates: (1) the date the lessee entered into military service; or (2) the date of the lessee's military orders. If the service member lessee on a lease is killed in action or while on active duty, then the immediate family or dependents of the lessee may terminate the lease.<sup>62</sup>

The service member must provide written notice of termination and a copy of his or her orders to the lessor.<sup>63</sup>

The effective date of the termination is thirty (30) days after service or, if the rent is paid monthly, 30 days after the next monthly rent payment is due. For all other leases, termination is effective on the last day of the month following the month which the notice is delivered.<sup>64</sup>

### **Attorney's Fees**

Notably, the Act provides for the award of attorney's fees, a provision not particularly common in Illinois military rights law. By this provision, service members and their families may have greater access to private counsel in the enforcement of the rights and protections under this Act.

## **3. No Shut-Off of Service Member's or Veteran's Electric or Gas Utility Used for Space Heating During Cold Season**

Service Members' Gas Heating Protected During Cold Season: stops service members and veterans from having their electricity or gas turned off due to non-payment between December 1 and March 31.<sup>65</sup>

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<sup>61</sup> 330 ILCS 62/5-10(2).

<sup>62</sup> 330 ILCS 62/5-15

<sup>63</sup> 330 ILCS 62/5-20(b).

<sup>64</sup> 330 ILCS 62/5-20(c).

<sup>65</sup> 220 ILCS 5/8-206(l). See: P.A. 97-77, effective 1-1-12.

## E. Payday Loans, Title Loans, and Tax Refund Advances

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### 1. Overview

This section treats several types of typically short-term consumer loans characterized by much higher interest rates and a history of preying on certain groups of individuals, including members of the military community. In order to understand the specific provisions designed to protect some members of that community (see the last subsection below entitled, “Specific Protections for Active Duty Service Members and Dependents”), one needs to briefly review certain general protections that currently exist in Illinois.

### 2. Non-military Specific State Law: Payday Loans

The Payday Loan Reform Act of 2005 (PLRA) regulates payday lending and is designed to lend some measure of protection to consumers from certain abuses associated with this type of lending.<sup>66</sup> A payday loan is generally defined in Illinois as:

“a loan with a term that does not exceed 120 days, including any transaction conducted via any medium whatsoever, including, but not limited to, paper, facsimile, Internet, or telephone, in which: (1) A lender accepts one or more checks dated on the date written and agrees to hold them for a period of days before deposit or presentment, or accepts one or more checks dated subsequent to the date written and agrees to hold them for deposit; or (2) A lender accepts one or more authorizations to debit a consumer's bank account; or (3) A lender accepts an interest in a consumer's wages, including, but not limited to, a wage assignment.<sup>67</sup>”

The minimum and maximum repayment terms (time) of what may be called a “traditional” payday loan are no less than 13 days nor more than 45 days. In addition to the term (time) restrictions, the following limitations apply to basic or traditional payday loans:

- **Maximum Two Loans At A Time:** Prohibition against lenders issuing more than two loans at a time;
- **No Rollovers:** Prohibition against loan rollovers (i.e., refinancing a payday loan with a new payday loan);
- **“Cooling Off” Period Prior To New Loan:** Creation of a seven-day cooling off period after 45-days of consecutive indebtedness;
- **Right to A Repayment Plan:** The debtor has the right to ask for a repayment plan on a loan 35 days or older with an unpaid balance. The plan should provide a debtor at least 55 days to repay the loan in installments but without the assessment of any more finance charges or other fees; and
- **Right to Prepay:** A consumer has the right to prepay the loan at any time without cost or penalty.<sup>68</sup>

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<sup>66</sup> 815 ILCS 122/1-1, et seq. [P.A. 94-13, eff. 12/06/05].

<sup>67</sup> 815 ILCS 122/1-10

<sup>68</sup> 815 ILCS 122/2-5(a), /2-35(g) and /2-40(e)(3).

### 3. Non-military Specific State Law: Car Title Loans

“Title secured loans” or car title loans in Illinois are governed by administrative regulation.<sup>69</sup> A “title secured loan” is any loan that has an interest rate greater than 36%, and where the borrower provides title to a motor vehicle as security for the loan when the loan is made.<sup>70</sup> The regulations regarding title secured loans provide:

- **Simple Interest:** Title loans must compute interest on a title secured loan as simple interest.<sup>71</sup>
- **Maximum Loan Amount:** The maximum amount of a title loan is \$4,000.
- **Gross Monthly Income Verification:** Before making a title-secured loan, the lender must get from the borrower at least one form of proof of gross income: (1) most recent pay stub/receipt; (2) most recent government benefits receipt; or (3) other documentation as approved by the Director of the Department of Financial and Professional Regulation.<sup>72</sup>
- **Full Amortization/No Balloon Payments:** Title loans must be fully amortized and repayable in substantially equal payments. Balloon payments are disallowed.
- **Debt Management Services Notification:** Before making a loan, a lender must provide a potential borrower with an approved pamphlet describing the availability of debt management services and the obligor’s rights and responsibilities in the transaction.
- **Written Acknowledgement:** The loan documentation package must include a signed, written statement from the borrower stating: “I have received from (name of lender) a toll-free number from the Department of Financial and Professional Regulation-Division Financial Institutions that I can call for information regarding debt management services.” (The toll-free number must also be provided to the debtor any time the lender sends out a notice of arrears or default.)
- **Identification of Subject Vehicle:** Title loan document must show on its face make/model/year and vehicle identification number (VIN) of vehicle being used as security. (Title loan lender must immediately take into possession the title.)
- **Database Check:** Before making a title loan, a lender is required to run a database check on a potential borrower in a database approved by the director of the Department of Financial and Professional Regulation-Division Financial Institutions for such purposes.<sup>73</sup>
- **Cooling Off Period:** No loan, other than a permitted refinancing, may be made to a borrower (obligor) who has had a title loan within the preceding 15 days or certain other related events.
- **Limitations on Monthly Payment Amounts:** The monthly payment may not exceed 50% of the borrower’s gross monthly income (although the borrower may prepay in any amount).<sup>74</sup>
- **Limitations on Refinancing:** A lender may allow a borrower to refinance a title loan only if 20% of the principal has been paid, and the new (refinanced) principal amount cannot be greater than the original principal amount.<sup>75</sup>

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<sup>69</sup> See the Consumer Installment Loan Act 205 ILCS 670/1.

<sup>70</sup> 38 Ill. Admin. Code §110.300.

<sup>71</sup> 38 Ill. Admin. Code §110.340.

<sup>72</sup> 38 Ill. Admin. Code §110.430.

<sup>73</sup> 38 Ill. Admin. Code §110.110.370(g).

<sup>74</sup> 38 Ill. Admin. Code §110.370(a).

<sup>75</sup> 38 Ill. Admin. Code §110.370(b).

- **Prompt Release of Any Lien/Return of Title:** Within 24 hours after paying off the loan, the lender must release any filed/recorded liens, provide evidence of such release, and return the title. (If the payment has been made by check, the lender may delay the release and return for five business days for the purpose of confirming availability of funds.<sup>76</sup>

#### 4. Non-military Specific State Law: Refund Anticipation Loans

P.A. 97-0849, effective January 1, 2013, creates the Tax Refund Anticipation Loan Reform Act. A “refund anticipation loan” (RAL) is “a loan that is secured by or that the creditor arranges to be repaid directly from the proceeds of the consumer’s income tax refund or tax credits.”<sup>77</sup>

In general terms, the new law provides the following consumer protections:

- **No Supplementary Tax Preparer Fees:** The law prohibits tax preparers from charging any fee for a refund anticipation loan or a refund anticipation check (RAC) in addition to the fee charged by a bank or lender (A RAC is check or other payment mechanism covering the proceeds of a tax refund deposited into a bank account set up for the borrower.).
- **No RALs based on State Tax Refunds:** The law prohibits RALs that are secured by State tax refunds.
- **Non-Bank Lender Interest Caps:** The law requires interest rates on RALs issued by non-bank lenders (e.g., payday lenders) be capped at 36%.
- **Attorney General Enforcement Authority:** The Office of the Illinois Attorney General has enforcement authority through the Consumer Fraud and Deceptive Business Practices Act.

#### 5. Specific Protections for Active Duty Service Members and Dependents

##### State Incorporation of Federal Law

The Talent-Nelson Amendment to the federal John Warner National Defense Authorization Act led to the insertion of a new provision in Title 10 (governing the armed forces) and gave authority to the Department of Defense to establish regulations concerning the terms of payday loans, vehicle title loans, and tax refund loans to service members on active-duty and their dependents.<sup>78</sup> The targeting of these particular products by this regulation is due to the traditionally high interest rates, short payback terms, and a history of consumer problems.

The basic rule under federal law for active duty service members and their dependents is that such loans may only charge a maximum Military Annual Percentage Rate (MAPR) of 36%, including fees and any charges. Also prohibited is any type of contract that requires check or electronic access to a bank account, the waiver of a right to sue in favor of mandatory arbitration, or unreasonable legal notice. Any agreement of this type that is subject to the regulation but fails to comply with it is unenforceable and void. Criminal liability may even attach to any creditor or assignee who knowingly violates this law.

<sup>76</sup> 38 Ill. Admin Code §110.350.

<sup>77</sup> 815 ILCS 177/1, *et seq.*

<sup>78</sup> P.L. 109-364, Sect. 670, *amending* Title 10, Chap. 49 by adding new 10 U.S.C. § 987 (2011); *See also* 32 C.F.R. § 232.1-232.11 (eff. Oct. 1, 2007).

The federal protection noted above has been adopted by Illinois as a state right as well. Any violation of the Talent Amendment or any regulation adopted under that provision is a violation of state law.<sup>79</sup> More generally, a violation of any federal legal protection pertaining to practices regarding service members and their dependents also is a violation of state law.<sup>80</sup>

### **State Payday Loan Collection Protections for the Military**

Although the PLRA discussed above provides general consumer protection to the public, there is an added protection to military members (“members of the military”). A “member of the military” enjoys certain collection protections under the Act.<sup>81</sup> A lender faces the following limits in regard to military borrowers:

- **No garnishment of Military Wages:** A lender may not garnish the wages or salaries of a consumer who is a member of the military.
- **Suspension of Collection Efforts (Combat or Combat Support Deployments):** On top of any rights under the federal SCRA, a lender must suspend and defer collection activity against a consumer who is a member of the military who is on a combat or combat support deployment (the suspension must be for the duration of the deployment).
- **No Contact with Chain of Command:** A lender shall not knowingly contact the service member’s military chain of command in an effort to collect.
- **Honoring Repayment Plans:** A lender must honor the terms of any repayment plan that the lender has entered into with the service member, including a repayment agreement negotiated through military counselors or third-party credit counselors.

## **F. Recent Illinois Legislation That Affects Service Members and Veterans**

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### **1. The Illinois Predatory Loan Prevention Act**

The Illinois Predatory Loan Prevention Act (PLPA)<sup>82</sup> was signed into law on March 23, 2021, and went into effect immediately. It was modeled after the Military Lending Act, which caps annual interest rates on consumer installment, payday and title loans at 36% for active duty service members and their families. The PLPA applies that same 36% cap on consumer installment, payday and title loans for *all* Illinois consumers, which would, of course, include veterans and their families.

The PLPA applies to any loan made or renewed after the effective date, March 23, 2021.<sup>83</sup> Any loan made in violation of this Act will be considered null and void, and no person shall have any

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<sup>79</sup> 815 ILCS 122/2-51 [PA 97-0413, eff. 1/1/2012]; See also, 38 Ill. Admin. Code §210.270.

<sup>80</sup> 815 ILCS 122/2-51.

<sup>81</sup> 815 ILCS 122/1-10.

<sup>82</sup> *See* Public Act 101-0658, Article 15, Division 1, Section 15-1-1. This new law takes effect on January 1, 2022.

<sup>83</sup> *Id.* at Article 15, Division 5, Section 15-5-5.



rights to collect, attempt to collect, receive, or retain any principal, fee, interest, or charges related to that loan.<sup>84</sup>

Violations of this Act constitute a violation of the Illinois Consumer Fraud and Deceptive Practices Act.

## **2. Public Act 102-0386<sup>85</sup>**

Public Act 102-0386 is an amendment to the Illinois Consumer Fraud and Deceptive Business Practices Act. This new law establishes consumer protections for service members and veterans seeking to file claims for VA benefits or for an increase in benefits, for those filing appeals to claims decisions and for those receiving benefits through a fiduciary.

The law applies to any individual or entity advertising or offering services to a service member, veteran or family member, where such services include assistance in obtaining VA benefits or increases in such benefits, or assistance in appealing a decision related to obtaining or increasing such benefits, in exchange for a fee, benefit or thing of value. Any individual or entity offering or advertising such services must, in their advertisement or offering, conspicuously disclose that the same such services are available free of charge through other governmental offices or other veteran service organizations.

The law also requires any individual or entity advertising such services to obtain all accreditations, licenses or qualifications required by both federal and State law. It requires fiduciaries for veterans receiving benefits to meet their fiduciary responsibilities as outlined in the Code of Federal Regulations (CFR).<sup>86</sup> It requires any individual providing representation before the VA to meet the standards of conduct outlined in the CFR.<sup>87</sup> Finally, it requires any individual or entity charging fees or expenses for such services to follow the guidelines for charging such fees and expenses outlined in the CFR.<sup>88</sup>

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<sup>84</sup> Id at Article 15, Division 5, Section 15-5-10.

<sup>85</sup> See 815 ILCS 505/2WWW, the Consumer Fraud and Deceptive Business Practices Act.

<sup>86</sup> 38 CFR 13.140.

<sup>87</sup> 38 CFR 13.14.632.

<sup>88</sup> 38 CFR 14.636 and 14.637

# Chapter 3: Litigating Against Active Duty Service Members

## A. Overview of SCRA Default Judgment Protections

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### 1. Affidavit Required in Seeking Default Judgment

Before any default may be taken, the Servicemembers Civil Relief Act (SCRA) requires the plaintiff to sign and file an affidavit with the court or agency stating whether or not the defendant is in active duty military service, or whether the plaintiff is unable to determine the military status of defendant.

<sup>1</sup> The affidavit should be made contemporaneously with filing of the motion for default judgment, and, out of an abundance of caution, the defendant's military status should be rechecked prior to entry of default judgment.

An affidavit that the defendant is or is not in the military service is required to be filed only where the defendant does not appear or appoint someone to appear for him or her. The SCRA does not specify what constitutes an appearance, which is a procedural matter governed by state law in proceedings in Illinois courts or agencies.

### 2. Reach of SCRA: Courts and Agencies

It is important to note that the protection of the SCRA "... applies to any judicial or administrative proceeding commenced in any court or agency in any jurisdiction subject to this Act."<sup>2</sup> The language of the law defines the term "court" to specifically include "any political subdivision of a State," which would include a county, municipality, city, town, township, or other special district created pursuant to State law.<sup>3</sup> Accordingly, the SCRA protections apply with as much force to federal and state court proceedings as to proceedings of units of local government, including among others, zoning board hearings, property tax assessment hearings and building code review hearings. The Illinois Supreme Court aptly stated that the provisions of the SCRA "must be regarded as written into our own statutes ... and, in effect, amending such statutes ...."<sup>4</sup>

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<sup>1</sup> 50 U.S.C. §3931(b).

<sup>2</sup> 50 U.S.C. §3912(b) [formerly, 50 U.S.C. app. §512(b)] (emphasis added).

<sup>3</sup> 50 U.S.C. §3911(5).

<sup>4</sup> *Illinois Nat. Bank of Springfield v. Gwinn*, 390 Ill. 345, 354 (Ill.1945).

### 3. Definition of Judgment

“The term ‘judgment’ means any judgment, decree, order, or ruling, final or temporary.”<sup>5</sup> It does not refer solely to a final judgment on the merits for the claim or claims for relief involved in the lawsuit.

## B. How to Comply with Notice Requirements

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### 1. Statement of Military Service

The SCRA states that either party or the court may apply to the Department of Defense (DOD) for information on whether a person is in the armed forces. The DOD must issue a statement as to military service.<sup>6</sup> The office in DOD to contact is the Defense Manpower Data Center (DMDC).

### 2. Servicemembers Civil Relief Act (SCRA) Website

To facilitate SCRA searches, DMDC has developed a secure public internet access system through which any requester can quickly determine whether an individual is currently in the armed forces. The website for SCRA queries is: <https://scra.dmdc.osd.mil/>.

The report generated via this website serves as the basis for an affidavit of military service. It is recommended that the generated report be included as an attachment to the affidavit of military service.

### 3. Required Information

There is no need to log in or create an account if the requester only needs to look up one individual at a time. The requester must provide a Social Security Number (SSN) and a last name **or** the date of birth and a last name.

### 4. Obtaining a Report via the Website

Complete the following steps to execute a report:

- Choose **Single Record** Request under *Select a Request* on the Home Page and click the “**submit**” button.
- Once the **Single Record Request** screen appears, complete the required fields, and then click on the “**Lookup**” button.
- Once the request has been processed, the website will provide a SCRA Certificate reporting the active duty status “**Status Report**” for the individual, in PDF format.

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<sup>5</sup> 50 U.S.C. §3911(9).

<sup>6</sup>50 U.S.C. §4012.

## 5. Status Report

The status report will include the name provided on the Single Request Screen, the Active Duty Status Date, the Active Duty Start Date, the Active Duty End Date, the Active Duty Status, and the Service Component for each of the following conditions:

- On Active Duty on Active Duty Status Date
- Left Active Duty Within 367 Days of the Active Duty Status Date
- The Member of His/Her Unit Was Notified of a Future Call-Up To Active Duty on the Active Duty Status Date (see example below)

If DMDC does not have information as to whether the individual is on active duty, the generated report will only list the supplied last name, first name and middle initial (if supplied), with the text: **“Based on the information you have furnished, the DMDC does not possess any information indicating that the individual is currently on active duty.”** (See example below). The report is signed by the DMDC Director.

DMDC has a very small error rate. However, if the requester receives the above response and a family member or representative insists that the individual is or was on active duty status for the active duty status date, DMDC recommends the requester obtain further status verification by contacting the associated service. Service contact information can be found at the following link: <http://www.defenselink.mil/faq/pis/PC09SLDR.html>.

## 6. Obtaining a Report via Mail or Facsimile

If the Social Security Number is unavailable, the requester may request a manual search by mail, using the date of birth of the individual instead of the SSN. A stamped, self-addressed envelope must be sent with the mail request to:

Defense Manpower Data Center  
Attn: Military Verification  
1600 Wilson Blvd., Suite 400  
Arlington, VA 22209-2593

There is no charge for the online SCRA queries and no authorization, user ID, or password is required. Requesters needing assistance may fax a request for a statement as to military service to DMDC at (703) 696-4156, or call (703) 696- 6762 or (703) 696-5790.

## C. Why Compliance is Important

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A default judgment rendered without SCRA compliance is voidable. The SCRA allows a service member who has not received notice of the proceeding to seek the vacation or setting aside of a default judgment.<sup>7</sup> The service member must apply for reopening the judgment while on active duty or within 90 days thereafter, and establish that, at the time the judgment was rendered, he

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<sup>7</sup> 50 U.S.C. §3931(g).

was prejudiced in his ability to defend himself due to military service.<sup>8</sup> Further, the service member must show that there is a meritorious or legal defense to the initial claim.<sup>9</sup> Default judgments will not be set aside when a litigant's position lacks merit, and this requirement avoids a waste of effort and resources in opening default judgments in cases where service members have no defense to assert.

Further, the failure to comply with the military affidavit requirement of the SCRA could result in a misdemeanor or fine. Submitting a false affidavit can subject the filer to misdemeanor prosecution; the maximum punishment is one year's imprisonment, a fine of \$1,000 or both.<sup>10</sup>

## D. Situations Where Defendant is Not in Military Service

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If the plaintiff's affidavit indicates that the defendant is not in active duty military service, the court or agency may proceed to enter default judgment.

## E. Situations Where Defendant is in Military Service

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The purpose of Section 3931 is to prevent default judgments from being entered against members of the armed services in circumstances where they might be unable to appear and defend themselves.<sup>11</sup> If the plaintiff's affidavit indicates that the defendant is in active duty military service, then the court or agency may not enter a default judgment until it has first appointed an attorney to represent the defendant's interests.<sup>12</sup>

The role of the appointed attorney is to protect the interests of the absent service member. By way of example, the appointed attorney might attempt to contact the absent service member in order to seek application for a stay of proceedings. It is important to note that if the appointed attorney is unable to contact the service member, the actions of the attorney do not waive any defense of the service member or in any way bind him or her.<sup>13</sup>

Upon request of the appointed attorney, the court or agency must grant a stay for at least 90 days if there may be a defense which cannot be presented in the absence of the service member, or the attorney has been unable to contact the service member to determine the existence of a defense.<sup>14</sup> Alternatively, the court or agency may enter a stay *sua sponte* if it determines there is a defense to the action that cannot be presented without the presence of the defendant or if after

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> 50 U.S.C. §3931(c).

<sup>11</sup> See *Roqueplot v. Roqueplot*, 88 Ill.App.3d 59, 410 N.E.2d 441 (2d Dist. 1980).

<sup>12</sup> 50 U.S.C. §3931(b)(2).

<sup>13</sup> *Id.*

<sup>14</sup> 50 U.S.C. §3931(d).

due diligence counsel has been unable to contact the defendant or otherwise determine whether a meritorious defense exists.<sup>15</sup>

After appointment of an attorney and the expiration of a stay period (if any) the court or agency may proceed to enter default judgment.<sup>16</sup> The failure of the court or agency to appoint an attorney for an absent service member renders a resultant default judgment merely voidable, and not void.<sup>17</sup>

## **F. Situations Where Unable to Determine Military Service of Defendant**

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If based upon the affidavits filed in the proceeding, the court or agency is unable to determine whether the defendant is in military service, then the court or agency may require the plaintiff to file a bond in an amount approved by the court or agency before entering judgment.<sup>18</sup> If the defendant is later found to be in military service, then the bond is available to indemnify the defendant against any loss or damage suffered by reason of any judgment subsequently set aside in whole or in part.<sup>19</sup> The bond is to remain in effect until expiration of the time to appeal under applicable law.<sup>20</sup>

## **G. Sample Affidavit and SCRA Website Report**

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A sample military service affidavit from the Circuit Court of Cook County, as well as a supporting report from the SCRA website, is attached to this subsection.

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *See, e.g., Hawkins, v. Hawkins*, 999 S.W.2d 171 (Tex. App. Austin 1999).

<sup>18</sup> 50 U.S.C. §3931(b)(3).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

\_\_\_\_\_  
Plaintiff

\_\_\_\_\_  
Defendant



No. \_\_\_\_\_

AFFIDAVIT AS TO MILITARY SERVICE

\_\_\_\_\_ on oath states:

With respect to defendant \_\_\_\_\_,

(the defendant is)

(the defendant is not)

(I am unable to determine whether the defendant is)

in the military service of the United States.

This affidavit is based on these facts:

/s/ \_\_\_\_\_

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 the above signed certifies that the statement set forth herein are true and correct.

Atty. No.: \_\_\_\_\_

Name: \_\_\_\_\_

Atty. for: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_



**Status Report**  
**Pursuant to Servicemembers Civil Relief Act**

Last Name: JAMES  
 First Name: VANDELAY  
 Middle Name: MATTIS  
 Active Duty Status As Of: JAN-13-2017

| On Active Duty On Active Duty Status Date   |                      |        |                   |
|---|----------------------|--------|-------------------|
| Active Duty Start Date  | Active Duty End Date | Status | Service Component |
| NA  | NA                   | No     | NA                |
| This response reflects the individual's active duty status based on the Active Duty Status Date |                      |        |                   |

| Left Active Duty Within 367 Days of Active Duty Status Date   |                      |        |                   |
|---|----------------------|--------|-------------------|
| Active Duty Start Date  | Active Duty End Date | Status | Service Component |
| NA  | NA                   | No     | NA                |
| This response reflects where the individual left active duty status within 367 days preceding the Active Duty Status Date |                      |        |                   |

| The Member or His/Her Unit Was Notified of a Future Call-Up to Active Duty on Active Duty Status Date                   |                             |        |                   |
|---|-----------------------------|--------|-------------------|
| Order Notification Start Date   | Order Notification End Date | Status | Service Component |
| NA  | NA                          | No     | NA                |
| This response reflects whether the individual or his/her unit has received early notification to report for active duty |                             |        |                   |

Upon searching the data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the status of the individual on the active duty status date as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for Active Duty.

*Mary M. Snavelly-Dixon*

Mary M. Snavelly-Dixon, Director  
 Department of Defense - Manpower Data Center  
 4800 Mark Center Drive, Suite 04E25  
 Arlington, VA 22350



# Chapter 4: Other Military/Veterans Laws

## A. Civil Rights

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### 1. Illinois Human Rights Act (775 ILCS 5/1-101 *et seq.*)

#### General Concepts/Introduction

The Illinois Human Rights Act was amended on August 4, 1993, making it unlawful to discriminate against an individual because of their military status in connection with employment, real estate transactions, access to financial credit, and the availability of public accommodations. "It is the public policy of this State ... [t]o secure for all individuals within Illinois the freedom from discrimination against any individual because of his or her ... military status ... or unfavorable discharge from military service in connection with employment, real estate transactions, access to financial credit, and the availability of public accommodations."<sup>1</sup>

#### Definitions

##### **Military Status**

Means a person's status on active duty in or status as a veteran of the Armed Forces of the United States, status as a current member or veteran of any reserve component of the Armed Forces of the United States, including the United States Army Reserve, United States Marine Corps Reserve, United States Navy Reserve, United States Air Force Reserve, and United States Coast Guard Reserve, or status as a current member or veteran of the Illinois Army National Guard or Illinois Air National Guard.<sup>2</sup>

##### **Unfavorable Military Discharge**

Includes discharges from the Armed Forces of the United States, their Reserve components or any National Guard or Naval Militia which are classified as RE-3 or the equivalent thereof, but does not include those characterized as RE-4 or "Dishonorable."<sup>3</sup> See the appendix A1 for some additional treatment of "unfavorable military discharge" in the administrative regulations issued by the Department of Human Rights.

#### Violations of Various Statutes

Over time, the Illinois Human Rights Act has been amended to make violations of the following statutes a violation of the Illinois Human Rights Act.<sup>4</sup>

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<sup>1</sup> 775 ILCS 5/1-102(A).

<sup>2</sup> 775 ILCS 5/1-103(J-1).

<sup>3</sup> 775 ILCS 5/1-103(P).

<sup>4</sup> 775 ILCS 5/6-102.

- Section 11-117-12.2 of the Illinois Municipal Code (65 ILCS 5)
- Section 224.05 of the Illinois Insurance Code (215 ILCS 5)
- Section 8-201.5 of the Public Utilities Act (220 ILCS 5)
- Section 2-1401.1, 9-107.10, , 15-1501.5, and 15-1501.6 of the Code of Civil Procedure (735 ILCS 5)
- Section 4.05 of the Interest Act (815 ILCS 205)
- The Military Personnel Cellular Phone Contract Termination Act (815 ILCS 633)
- Section 10-63 of the Illinois Administrative Procedure Act (5 ILCS 100)
- Sections 30.25 and 30.30 of the Military Code of Illinois (20 ILCS 1805)
- Section 16 of the Landlord and Tenant Act (765 ILCS 705)
- Section 26.5 of the Retail Installment Sales Act (815 ILCS 405)
- Section 37 of the Motor Vehicle Leasing Act (815 ILCS 636)

### **Filing a Complaint with the Illinois Department of Human Rights**

The Illinois Department of Human Rights (IDHR) is the State agency responsible for enforcing the Illinois Human Rights Act. You may be able to file a charge of discrimination with IDHR if:

- You are subjected to discriminatory treatment by a covered individual (for sexual harassment and retaliation allegations in employment, and for real estate transactions), business, employer, labor organization, employment agency, or government agency;
- The conduct was based on your status in one of the protected classes;
- The conduct was in one of the five covered areas; and
- The charge is filed with the Department of Human Rights as soon as possible after the discrimination occurs, but no later than 180 days after the date the discrimination took place. (You are allowed one year to file charges of housing discrimination).

If you are a service member and believe you have experienced discrimination in employment based on your service, contact the Illinois Attorney General's Military & Veterans' Rights helpline at 1-800-382-3000. For more information, see the discussion on the Illinois Service Member Employment & Reemployment Rights Act (ISERRA) in Chapter 1.

## **B. Education**

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### **1. Past Wartime Veterans' Right to Request High School Equivalency Diploma for Schooling Missed Due to Service**

Illinois law provides, under certain conditions, for the award of a high school diploma for WWII, Korean, and Vietnam veterans. The goal is to award a high school diploma to those who left school before graduating to serve in the armed forces when the conditions outlined below are met. The law also includes a section for the posthumous award of a high school diploma in similar cases where the veteran was killed in action:

(105 ILCS 5/22-27)

Sec. 22-27. World War II, Korean Conflict, and Vietnam Conflict veterans; diplomas.

- (a) Upon request, the school board of any district that maintains grades 10 through 12 may award a diploma to any honorably discharged veteran who:
- (1) served in the armed forces of the United States during World War II, the Korean Conflict, or the Vietnam Conflict;
  - (2) resided within an area currently within the district;
  - (3) left high school before graduating in order to serve in the armed forces of the United States; and
  - (4) has not received a high school diploma.
- (a-5) Upon request, the school board of a school district that maintains grades 10 through 12 may posthumously award a diploma to any service member who was killed in action while performing active military duty with the armed forces of the United States if all of the following criteria have been met:
- (1) He or she resided in an area currently within the district.
  - (2) He or she left high school before graduating to serve in the armed forces of the United States.
  - (3) He or she did not receive a high school diploma.
- (b) The State Board of Education and the Department of Veterans' Affairs may issue rules consistent with the provisions of this Section that are necessary to implement this Section.
- (Source: P.A. 96-88, eff. 7-27-09.)

## **2. The “Education USERRA”: Reenrollment Rights Under the Higher Education Opportunity Act (HEOA)**

### **Introduction to the “Education USERRA”**

When Congress enacted the Higher Education Opportunity Act (HEOA) in 2008, which reauthorized the Higher Education Act of 1965, it created in the process a new requirement upon institutions of higher learning for the benefit of members of the U.S. Armed Forces. That provision, now found at 20 U.S.C. § 1091c(b) states that “a person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform, service in the uniformed services shall not be denied readmission to an institution of higher education on the basis of that membership, application for membership, performance of service, application for service, or obligation” In other words, the HEOA establishes readmission rights for service members who are students much the same way the reemployment rights are provided in the well-known Uniform Servicemembers Employment and Reemployment Rights Act (USERRA).

### **Definitions**

For purposes of HEOA, “Institution of Higher Education” includes both public and private schools who admits students beyond the age of compulsory school attendance. See 20 U.S.C. § 1091c(b) for the complete definition.

### **Eligibility**

To qualify, a student service member must follow a statutorily specified readmission procedure.

1. **Notice.** The service member must give advance notice of military service to the appropriate official at the institution of higher education. While verbal notice is acceptable, students should give notice in writing in a manner that identifies form, date and time of notice. Notice may also be provided by an appropriate military officer or official of the Department of Defense;
2. **5-Year Cap.** The cumulative total period of absence cannot exceed five (5) years. The cumulative amount only includes absences from the institution of higher education in question and only those absences for military service; and
3. **Intent to Reenroll.** Upon a service member's return, he or she must provide notice of his or her intent to reenroll at the institution of higher education from which he or she took leave. Generally, the student has three (3) years from the completion of military service to apply for reenrollment or two (2) years after a period of recovery when hospitalized or convalescing from an illness or injury incurred in or aggravated during military service.

### **Summary of Key Rights**

- A student readmitted under this Act is entitled to readmission in the same academic status that existed at the time the student left to perform military service.

### **Important Differences between HEOA and USERRA**

One should be aware of a couple of important differences between the two laws.

1. **Active Duty (AD) Service Only.** HEOA does not cover Inactive Duty Training (IDT), training under Title 32, and AD for less than thirty (30) consecutive days. HEOA covers AD under federal authority for 30 or more days.
2. **Three-Year Window to Give Intent to Return Notice.** HEOA, however, has a much larger time period within which the service member may give notice of intent to return.

## **C. Electronic Monitoring of Residents at State Veterans Homes**

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The Authorized Electronic Monitoring in Long-Term Care Facilities Act (210 ILCS 32) became effective January 1, 2016. This Act mandates that any facility licensed under the Nursing Home Care Act (20 ILCS 45) must allow the installation of fixed video and/or audio recording devices in a resident's room upon a valid request as described in further detail in the Act. All five of Illinois' currently operational Veterans Homes are licensed under the Nursing Home Care Act and thus are also subject to this Act.

## D. Family Law

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### 1. Federal Military Child Custody Provisions

Although the Servicemembers Civil Relief Act (SCRA) is discussed at length in the section above under consumer rights, one recent addition to the SCRA concerning family law merits treatment in this section of the booklet. Contained within the National Defense Authorization Act (NDAA) for Fiscal Year 2015, which was signed by the President on December 19, 2014, was an amendment to the SCRA that added what has been now recodified as 50 U.S.C. §3938.

While family court issues are largely the responsibility of State courts, this new provision provides some degree of protection in State court custody dispositions for parents who are service members in the Armed Forces of the United States. In general, §3938 states that if a court makes a temporary custody order solely on the basis of a deployment or anticipated deployment, then the court shall require the reinstatement of the pre-deployment custody order upon the service member's return home unless the court otherwise determines that such return to the prior order would not be in the best interests of the child.<sup>5</sup> Also, the section bars the court from considering either the service member's absence due to deployment or the possibility of the service member's absence due to deployment as the only factor in deciding what the best interest of the child would be.

### 2. Illinois Military Child Custody & Visitation Provisions

#### Family Care Plan a Factor in Best Interests of Child Determinations

In determination of the best interest of the child, the Court shall, among other things, consider the terms of a parent's military family-care plan that a parent must complete before deployment if a parent is a member of the United States Armed Forces who is being deployed.<sup>6</sup> Additionally, a Court may allow the designation of a "reasonable substitute" of a deployed parent who is known to the child to maintain the deployed parents' visitation rights on their behalf.<sup>7</sup>

#### Right to an Attorney Through HFS to Raise SCRA Rights

In the Administrative Code [HFS, Child Support Enforcement Program ("IV-D" cases)], 89 Ill. Admin Code §160.10(i), a service member has the right to the appointment of counsel in Public Aid Child Support Cases for service members: "Whenever in the course of an administrative proceeding, as provided for under the Public Aid Code [305 ILCS 5/10] and in accordance with this Part, it appears that the non-custodial parent is in the military service and the Servicemembers Civil Relief Act (SCRA) (50 USC App. §§ 501-596) requires the appointment of counsel, the Department shall have the authority to appoint counsel for the service member non-custodial parent. The appointed attorney will perform the duties required under the SCRA that include locating members, advising them of proceedings and requesting stays if the members' military duties materially affect their ability to participate in cases."<sup>8</sup>

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<sup>5</sup> 50 U.S.C. §3938(a) & (b).

<sup>6</sup> 750 ILCS 5/602.7(b)(16).

<sup>7</sup> 750 ILCS 5/602.7(d).

<sup>8</sup> 89 Ill. Admin Code §160.10(i).

### **3. VA Disability Pay and Divorce**

Readers of this publication should seek private legal counsel for guidance on the question of VA disability payments and divorce in Illinois. However, such legal counsel may include discussion of cases such as *In Re Marriage of Wojcik*. 362 Ill. App. 3d 144, 838 N.E.2d 282 (2<sup>nd</sup> Dist. 2005). (“[W]e hold that a trial court may properly consider a party's receipt of veterans' disability benefits in determining a party's obligation to pay maintenance, as well in determining whether the party is entitled to an award of maintenance.”)

## **E. Jurisdiction: State vs. Federal Jurisdiction over Certain Federal Lands in Illinois**

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Within Illinois, there is no overall legal regime that controls the design, construction, or maintenance of federal lands within the State. State land interests over federal land vary by law, location, and even vary within single federally used lands such as Scott Air Force Base. Land use agreements between the State and federal entities may influence legal rights depending on the issues. These laws are primarily located under the “State Land” provisions in Chapter 5 of the Illinois Compiled Statutes beginning with Section 510. Relevant State laws include:

1. Federal and State Land Jurisdiction Act of 1991 at 5 ILCS 590.
2. Great Lakes Naval Base Jurisdiction Act at 5 ILCS 595
3. Veteran’s Administration Retrocession Act at 5 ILCS 560.

## **F. Legal Assistance**

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### **The “Illinois Armed Forces Legal Aid Network” Under the Illinois Access to Justice Act**

The State of Illinois recognizes civil legal aid as an important unmet need. For Illinois veterans, service members, and dependents, the need is significant particularly in the areas of consumer issues including a wide array of veterans benefits scams. To meet this need, The Illinois Armed Forces Legal Aid Network was established. Also known as IL-AFLAN, this State wide legal aid hotline teams up with various legal aid organizations and law school clinics to provide legal advice and services. Legal services are limited to incomes capped at 80% of the Chicago area median income for veterans, service members or dependents (except in actions adverse to the veteran or service member) as long as the legal need is an issue addressed by one of the available attorneys. Veterans with a dishonorable discharge are not eligible. Here is some additional information about IL-AFLAN:

IL-AFLAN was created through a 2013 amendment to the Access to Justice Act establishing a statutory Council directed to establish IL-AFLAN as a pilot program. The Council, known as the Illinois Access to Civil Justice Council, oversees the program including grant applications for supporting legal entities. The Act tasked the Illinois Equal Justice Foundation (IEJF) with implementation of the program.

IEJF overseas similar programs and contains the necessary organizational expertise to ensure the program is successful.<sup>9</sup>

IL-AFLAN is funded by a temporary \$2 surcharge to civil filing fees and through donations. For legal assistance, qualified persons should call the IL-AFLAN hotline at 1-855-452-3526 (855-IL-AFLAN). For more information on the Illinois Armed Forces Legal Aid Network visit <https://iejf.org/Illinois-armed-forces-legal-aid-network/>.

## G. Memorials

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### 1. Overview

Within Illinois, there is no overall legal regime that controls the design, construction, or maintenance of veterans' memorials. However, there are pieces of legislation which touch upon the subject as noted below.

Public acts: allow a county board or board of county commissioners to appropriate money for maintenance of veterans' memorials<sup>10</sup>; require townships to pay for maintenance of veterans' memorials the township has chosen to erect<sup>11</sup>; and allow park districts to lease land to nonprofit corporations if (1) the land is a site for a memorial to the military and naval forces of this State and of the United States AND (2) the nonprofit shall be responsible for the maintenance of the memorial.<sup>12</sup>

### 2. Veterans Burial Act

The Veterans Burial Places Act requires the Illinois Department of Veterans Affairs to keep records ("a card file" or "War Veterans Graves and Memorial Markers Registration") of all veterans' burial sites and any memorial marker sites in Illinois. It also requires the IDVA to pay up to \$125 to the next of kin or cemetery official responsible for the cost of transporting and erecting the qualifying headstone or memorial. 330 ILCS 110/1.1; See also, 95 Ill. Admin Code §102.5-102.30. The Act further requires owners and operators of cemeteries or burial places to keep permanent records regarding veteran headstones and memorial markers. 330 ILCS 110/2. Failure to make a report upon request of the IDVA is a petty offense. Finally, Illinois veteran's organizations are authorized, at no expense to the State, to collect such information, and file prepared reports with the IDVA.<sup>13</sup>

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<sup>9</sup> 705 ILCS 95/1, *et seq.*

<sup>10</sup> 55 ILCS 5/5-26005

<sup>11</sup> 60 ILCS 1/160-5

<sup>12</sup> 70 ILCS 1205/10-4

<sup>13</sup> 330 ILCS 110/3.

### 3. Statutory Authorization for Certain War Memorials

Specific acts authorizing war memorials are The Gulf War Veterans Act (5 ILCS 630) and the War on Terrorism Veterans Act (5 ILCS 635). Obviously, the lack of a specific statutory authorization does not prohibit a memorial for other wars or conflicts. Public funds are available, in whole or part, in certain circumstances. For more information, see the section entitled Building Memorials with Public Money.

### 4. Building Memorials with Public Money (County Government)

For county government, there are two ways in which public money may be expended to build a veterans memorial. One way this may be done is in combination with private funding (this method is discussed more below). The other way is by referendum:

§ 5-26001. Submission of question of erecting memorial. Upon the petition of two hundred, or more, legal voters of a county being filed with the county clerk, praying that the proposition of erecting or completing a monument or memorial building in honor of its soldiers and sailors at the county seat be submitted to a vote of the people of such county, such proposition shall be submitted to a vote of the people at any regular election. The county board shall certify the proposition to the proper election officials, who shall submit the proposition at an election in accordance with the general election law. Such proposition shall be in substantially the following form:

|  |   |     |  |  |  |
|--|---|-----|--|--|--|
|  | Proposition for the erection of a monument or memorial building in honor of the soldiers and sailors of the county. | YES |  |  |  |
|  |   | NO  |  |  |  |

If a majority of all the votes cast on such proposition is in favor thereof, the county board of such county, within one year after such election, shall appropriate sufficient funds to erect a suitable monument or a suitable memorial building, and purchase a site therefor, if necessary, at the county seat, in honor of its soldiers and sailors. If the revenues of the county under the general tax levy are insufficient to provide for the erection of such building and the purchase of a site therefor, if necessary, the county board may also at the same election cause submission to the voters the proposition of levying an additional tax and issuing bonds therefor in the manner provided by Sections 5-2001 and 5-2005, as amended.

If a memorial building is erected it shall be under the supervision and control of the county board, and the county board may permit such use of the building as it deems advisable.<sup>14</sup>

<sup>14</sup> Monuments in Honor of Soldiers and Sailors (section 5/5-26001) of the Counties Code (55 ILCS 5)



## **5. Building Memorials Wholly or Partially with Private Funds (County Government)**

Although not directly controlling, it is worth noting that there exist examples of legal authority being granted by government for the building of veterans memorials on public property at private expense:

1. Gulf War Veterans Act, 5 ILCS 630/5. Effective 8/16/2002, P.A. 92-799 established authority for the construction of A Gulf War Veterans Memorial to be built by a private entity on a portion of the State property in Oak Ridge Cemetery in Springfield, Illinois.
2. War on Terrorism Veterans Memorial, 5 ILCS 635/5. The Act envisions the creation of the War on Terrorism Veterans Memorial and provides: "A memorial honoring persons who earned (i) the Southwest Asia Service Medal, (ii) the Afghanistan Campaign Medal for service in Operation Enduring Freedom, (iii) the Iraq Campaign Medal for service in Operation Iraqi Freedom, or (iv) the Global War on Terrorism Expeditionary Medal for service in either Operation Enduring Freedom or Operation Iraqi Freedom may be constructed by a private entity on a portion of the State property in Oak Ridge Cemetery in Springfield, Illinois."
3. Public Monuments and Memorials on Land Managed by the Illinois Department of Natural Resources. § 805-510. Public monuments and memorials. The Department has the power to erect, supervise, and maintain all public monuments and memorials erected by the State on properties under the jurisdiction of the Department of Natural Resources, except when the supervision and maintenance of a monument or memorial is otherwise provided by law. Under the power granted by this Section the Department shall (i) provide a site in Rock Cut State Park for the Winnebago County Vietnam Veterans' Memorial and (ii) allow the Vietnam Veterans' Honor Society to erect the Memorial of an agreed design. 20 ILCS 805-510.

In regard to a memorial building to be paid for in part by private funds ("subscriptions" or what may be construed as private pledges), there is a mechanism by which county money may also be contributed with certain statutory requirements and conditions:

§ 5-26002. Subscriptions. Whenever the people of any county shall desire to erect, or contribute to the erection of a memorial building in honor of their soldiers and sailors and shall procure bona fide subscription to the extent of two thirds of the estimated cost thereof, it shall be lawful for any county by a two-thirds vote of the county board or board of county commissioners, as the case may be, to contribute such sum or sums of money toward the cost of erecting such a memorial building not exceeding one-third of the cost thereof, as shall be deemed discreet and proper: Provided, that such contribution shall be made subject to the following conditions: (1) said building shall be constructed in accordance with plans, approved by such county board; (2) when erected, shall be forever used exclusively for public or civic purposes; and (3) if, at any time after the construction thereof, it shall cease to be used for such purposes, it and the property upon which it is situate, shall revert to and become the property of said county. 55 ILCS 5/5-26002.

With the enactment of SB 1824 (now P.A. 98-0312), county government can arrange for public money to be used to maintain private memorials:

§ 5-26005. Maintenance. Whenever any memorial building is erected through private subscriptions, as herein provided, or any veterans' memorial is erected, it shall be lawful for the county board or board of county commissioners, as the case may be, to appropriate such sums of money from year to year as it may deem reasonable and proper to cover any deficiency in the cost of the maintenance thereof. 55 ILCS 5/5-26005.

There are no known parallel maintenance provisions in the Township Code or the Municipal Code in regard to privately funded memorials. However, P.A. 98-0312, did insert authority to spend Township and Municipal funds for the maintenance of memorials created under the authority of 60 ILCS 1/160-5:

(d) Provisions for the payment and maintenance for the monument shall be made by the proper taxing and financial officers in the same manner as for other township expenditures. 60 ILCS 1/160-5(d).

Under the municipal code, the new maintenance language appears within 65 ILCS 5/11-116-2:

Sec. 11-116-2. When the petition specified in this Division 116 is filed with the municipal clerk of a municipality specified in this Division 116, the question of erecting a monument or memorial shall be certified by the clerk and submitted to the electors of the municipality. The question shall be in substantially the following form:

|  |  |     |  |  |
|--|--|-----|--|--|
|  | Shall a monument (or memorial) be erected in honor of (insert for whom to be erected) by ..... | YES |  |  |
|  | (insert name of the municipality) at a cost not to exceed \$_____?                             | NO  |  |  |

If a majority of those voting on the question vote yes, the corporate authorities shall have the monument or memorial erected and, if necessary, shall levy and collect, in the same manner as other general taxes are levied and collected, a tax sufficient to raise the amount specified in the petition, and to provide for the maintenance of the memorial.

In regard to park district property, P.A. 98-0312 inserted into the Park District Code (70 ILCS 1205/10-4) authorization for park districts by ordinance to lease out park district property to not-for-profit organizations for up to 99 years, the requirement that such lessor be responsible for the maintenance of the memorial:

Such district may by ordinance lease, for any period not exceeding 99 years, any tract or parcel of land of the park district to any organization incorporated under the laws of this State as a corporation not for pecuniary profit, as a site for a memorial to the military and naval forces of this State and of the United States,

provided that such organization shall be responsible for the maintenance of the memorial.

Finally, the Historic Preservation Agency Act states that the Historic Sites and Preservation Division of the Historic Preservation Agency has jurisdiction over the Illinois Vietnam Veterans State and the Korean War Memorials in Sangamon County. 20 ILCS 3405/6.

## **H. Probate**

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### **1. Protecting the Estate of Those Missing in Action**

Under Illinois probate law, when a service member is declared missing in action by an appropriate federal authority, a court may issue “Letters of administration to collect” which authorizes any interested person authority to take certain legal steps to protect the estate from waste, embezzlement, and to collect debts. A proper petition must be filed with the court in the appropriate county. Requirements for a proper petition are outlined in Section 10-2 of the Probate Act of 1975 (755 ILCS 5).<sup>15</sup>

### **2. VA Notice for Certain Hearings on a Ward’s Estate**

Under the Probate Code, in the case of an Estate of a Ward, there are times where the U.S. Department of Veterans Affairs (and not the Illinois Department of Veterans’ Affairs) has a statutory right to notice of a hearing. “If the estate of a ward is derived in whole or in part from payments of compensation, adjusted compensation, pension, insurance or other similar benefits made directly to the estate by the Veterans Administration, notice of the application for leave to invest or expend the ward's funds or estate, together with a copy of the petition and proposed order, shall be given to the Veterans’ Administration Regional Office in this State at least 7 days before the hearing on the application.”<sup>16</sup>

The VA’s interest, however, extends only as far as that portion of the estate, invested or uninvested, “which is derived from payments made directly to the estate by the Veterans Administration.”<sup>17</sup> Unless the Court determines otherwise, the presumption is that authorized expenditures made above come first from the funds received from the VA.

The VA also has the right under Illinois law to receive notice of any hearing concerning an account of the estate of a ward:

If the estate of a ward is derived in whole or in part from payments of compensation, adjusted compensation, pension, insurance or other similar benefits made directly to the estate by the Veterans Administration, notice of the hearing on any account filed in the ward's estate and a copy of the account must be given to the Veterans' Administration Regional Office at least 10 days before the hearing. If notice of the hearing on any account except the final account of a representative is served at least 10 days before the hearing on the account and

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<sup>15</sup> 755 ILCS 5/10-1 & 10-2

<sup>16</sup> 755 ILCS 5/11-13(b).

<sup>17</sup> 755 ILCS 5/24-22.

the court appoints a guardian ad litem to represent the ward at the hearing, in the absence of fraud, accident or mistake, the account as approved is binding upon the ward. Notice of the hearing on any final account of a representative must be given to the ward if he is living and to such other persons and in such manner as the court directs.<sup>18</sup>

### **3. Waiving or Setting Low Bonds for Small Estates Based Primarily on VA Benefits**

In regard to small estates based mainly on VA Benefits, the Probate Code states:

If (1) the primary purpose for the appointment of a representative of a ward is the collection, disbursement or administering of moneys awarded by the Veterans Administration to the ward, (2) the net value of the ward's estate does not exceed \$500, including accrued unpaid benefits to be received, (3) the benefits to be received do not exceed \$60 per month and (4) substantially all income will be required for the maintenance of the ward and his dependents, the court may waive the giving of bond by the representative or may fix the amount of the bond in a sum less than \$500. If the bond has previously been filed, it may be released upon the conditions prescribed in this Section upon proper accounting after notice to the Veterans' Administration Regional Office. If a bond has been waived or nominal bond only required, an adequate bond as otherwise required by this Section shall be required whenever the value of the estate exceeds \$500 or for other cause appearing to the court.<sup>19</sup>

### **4. Limitation on Costs Charged Against VA Funded Estates**

The Probate Code limits costs charged against estates funded by VA benefits:

Costs in certain cases. No costs may be taxed or charged by any public officer in any proceeding for the appointment of a guardian or for any subsequent proceeding or report made in pursuance of the appointment when the primary purpose of the appointment is any of the following:

...

(b) The collection, disbursement or administering of money or assets derived from money awarded to the ward by the Veterans Administration or by any state or territory of the United States or the District of Columbia as a veteran's benefit, but costs may be allowed, in the discretion of the court, whenever there are assets from sources other than the Veterans Administration.<sup>20</sup>

### **5. VA Certificate of Incompetency as Evidence Regarding the Appointment of a Guardian for an Alleged Disabled Person**

Concerning hearings over the issue of the appointment of a guardian for an adult with disabilities, the Probate Court provides the following evidentiary rule:

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<sup>18</sup> 755 ILCS 5/24-11(b).

<sup>19</sup> 755 ILCS 5/12-6(c).

<sup>20</sup> 755 ILCS 5/11-11.

If the petition is for the appointment of a guardian for a beneficiary of the Veterans Administration who has a disability, a certificate of the Administrator of Veterans Affairs or his representative stating that the beneficiary has been determined to be incompetent by the Veterans Administration on examination in accordance with the laws and regulations governing the Veterans Administration in effect upon the date of the issuance of the certificate and that the appointment of a guardian is a condition precedent to the payment of any money due the beneficiary by the Veterans Administration, is admissible in evidence at the hearing.<sup>21</sup>

## 6. Fees for Public Representatives Prohibited

Finally, the Probate Code prohibits fees for a public administrator regarding that portion of the estate derived from VA benefits:

A representative is entitled to reasonable compensation for his services, but no fees, charges or other compensation may be allowed a public administrator for services performed in administering that part of the estate of any United States war veteran which consists of compensation, insurance or other monies due or payable from the United States because of the veteran's war service...<sup>22</sup>

## I. Taxation

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### **Important Disclaimer**

The overview below of select taxation issues that might impact service members or veterans, their spouses, and families, is provided for general educational purposes. This overview is not a legal opinion or position of the Office of the Illinois Attorney General or of the Illinois Department of Revenue (IDOR). Readers who believe any of the following topics might apply to them are directed to contact the relevant government agency and to seek legal advice from a competent professional for a thorough, in-depth analysis of specific issues. The information contained herein is not sufficient to avoid tax-related penalties.

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<sup>21</sup> 755 ILCS 5/11a-11(g).

<sup>22</sup> 755 ILCS 5/27-1.

### **Get the Latest Tax Information**

Tax is a complex area of law involving expertise. Tax laws change annually at both the state and federal levels. This information represents only a snapshot in time and has likely seen changes by the time you are reading this. We strongly encourage service members and spouses to visit the Illinois Department of Revenue website. This Department publishes a consolidated and up-to-date information sheet that serves as a comprehensive analysis of military tax issues. As of January 2020, this guide is referred to as *Publication 102: Illinois Filing Requirements for Military Personnel*. Military families should check the website or call 1-800-732-8866 or e-mail [Rev.MyTaxHelp@illinois.gov](mailto:Rev.MyTaxHelp@illinois.gov) to request the most updated version of the guide. Hours are available Monday through Friday, 8 am – 5 pm.

## **1. Employer Tax Benefits for Hiring Veterans: Illinois State Veteran's Tax Credit**

A State tax credit is available to Illinois employers who hired veterans of Operation Desert Storm, Operation Enduring Freedom, or Operation Iraqi Freedom. For every such veteran hired on or after January 1, 2007, a credit of 10% of the total wages paid to every “qualified veteran” up to \$1,200 per year could be taken provided that the veteran had worked at least 185 days during the tax year.

A “qualified veteran” means an Illinois resident who:

- was a member of the Armed Forces of the United States (including any reserve component) or of the Illinois National Guard;
- served on active duty in connection with Operation Desert Storm, Operation Enduring Freedom, or Operation Iraqi Freedom;
- has provided you with documentation showing that he or she was honorably discharged; and
- was initially hired by you on or after January 1, 2007.<sup>23</sup>

An additional State tax credit exists for hiring unemployed veterans. A credit of 20% of qualified wages paid during the taxable year to an employee who is a “qualified unemployed veteran,” up to \$5,000 per year, may be taken.

A “qualified unemployed veteran” means an Illinois resident who:

- was a member of the Armed Forces of the United States (including any reserve component) or of the Illinois National Guard;
- served on active duty on or after September 11, 2001;
- has provided you with documentation showing that he or she was honorably discharged;
- was initially hired by you on or after June 1, 2012;
- was unemployed for a total of 4 weeks or more during the six-week period ending on the Saturday immediately preceding the date he or she was hired by you; and

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<sup>23</sup> 35 ILCS 5/217.

- was employed by you
  - at least 185 days; or
  - at least 31 days if that employee was unemployed for a total of six months or more during the one-year period ending on the date he or she was hired.<sup>24</sup>

Other rules apply. For more information, contact the IDOR and seek the guidance of a qualified professional. A claim for the tax credit can be made by employers on income tax returns. Income tax form 1299-D (for corporations), 1299-C (for individuals), or 1299-A (for partnerships and S corporations) are used to file for the Veteran's Tax Credit.

## 2. Illinois Income Taxation and the Military

### Tax Domicile and Military Service

Extended periods of military service do not necessarily change one's domicile. As noted in the Illinois Administrative Code provisions concerning the State income tax, "Under 50 USC App. 571, members of the U.S. Armed Forces (and commissioned officers of the U.S. Public Health Service) will not cease to be domiciled in Illinois solely by reason of their assignment to duty in other states for long periods." Likewise, "[d]omiciliaries of other states will not become Illinois residents under the Act solely by reason of their presence in Illinois under military orders."<sup>25</sup>

### Taxation of Service Member Pay

Illinois does not tax military pay earned by service members. Using a [Schedule M](#), you may subtract certain military income deemed tax-exempt that has been included in your adjusted gross income (AGI), including:<sup>26</sup>

- **Basic Duty Pay:** Pay for military service in the armed forces, including basic training;
- **Cadet/Midshipman/ROTC Pay:** Pay for military service as a cadet at the U.S. Military, Air Force, and Coast Guard academies, as a midshipman at the U.S. Naval Academy, or in ROTC; OR
- **Reserve Component Pay:** Pay for military service in the Reserve Component (either in the U.S. Armed Forces Reserves or a National Guard unit, including a National Guard unit of another state).

Note, however, that you may not exclude the following:

- **Military Income Already Excluded from AGI:** Military income (such as combat pay) that you excluded from your AGI on Form IL-1040, Line 1;
- **Voluntary Separation Pay:** Pay you received under the Voluntary Separation Incentive;
- **Civilian Pay:** Pay you received from the military as a civilian;
- **RRMIIP Payments:** Payments you made under the (terminated) Ready Reserve Mobilization Income Insurance Program<sup>27</sup>; OR

<sup>24</sup> 35 ILCS 5/217.1

<sup>25</sup> 86 Ill. Admin. Code §100.3020(h) referencing 50 U.S.C. §4001 (formerly, 50 U.S.C. App. §571).

<sup>26</sup> See Schedule M and instructions on the IDOR website here; [2020 Individual Income Tax Forms - Income Tax Forms \(illinois.gov\)](#)

<sup>27</sup> The Ready Reserve Mobilization Income Insurance Program (RRMIIP) was instituted in response to growing concerns about the reported financial losses incurred by some reservists who were activated for the Persian Gulf

- **Public Health Service Pay:** Pay for duty as an officer in the Public Health Service.<sup>28</sup>

One should further note that there remains a tax obligation for those Illinois reserve component members who are public employees receiving differential or concurrent compensation under the Illinois Service Members Employment & Reemployment Rights Act (ISERRA at 330 ILCS 61).

### **Taxation of Service Member's Spouse's Income When Stationed, but Not Domiciled in Illinois**

50 U.S.C. §4001(c) of the Servicemembers Civil Relief Act (SCRA) states: "Income for services performed by the spouse of a servicemember shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the spouse is not a resident or domiciliary of the jurisdiction in which the income is earned because the spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders." This provision may not necessarily be limited to wage income alone, but may extend also to the self-employment income of a service member's spouse to the extent such income derives from services performed by the service member's spouse. A service member's spouse with self-employment income should seek professional counsel on this issue.

## **3. Illinois Income Tax Withholding and Certain Military Spouses**

In 2018, Congress passed Public Law 115-407 (12/31/2018) entitled the Veterans Benefits and Transition Act of 2018 led to changes in Illinois income tax withholding for certain military spouses as noted in a Department of Revenue Publication 102. Before this change, only the service member originally resident in another state had the right to maintain that residency for tax purposes while stationed in Illinois on military duty. An accompanying spouse had no such option and would have to face the prospect of being obliged to adopt Illinois as the new residence for tax purposes. Going forward, the spouse enjoys the same choice that the service member.

Employee wages for a qualified nonresident spouse of a service member are not taxable by Illinois. If qualified spouses were taxed for tax year 2018 or after, he or she may be entitled to a refund. Contact the Illinois Department of Revenue for the appropriate form. To claim the exemption beforehand, submit an Employee's Statement of Nonresidence and write on the top of the form in red ink "Military Spouse". You are a qualified nonresident spouse if:

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War (Operation Desert Storm/Shield, 1990-1991). Although the Soldier's and Sailor's Civil Relief Act (SSCRA) has long given reservists some protection against financial loss due to mobilization, one survey sponsored by the Department of Defense (DOD) indicated that as many as two-thirds of the reservists activated during Operation Desert Shield/Storm suffered economic loss as a result of their deployment. These losses occurred due to differences between the reservists' military and civilian pay, expenses incurred by reservists because of mobilization, and the decline in business experienced by self-employed reservists during and after release from active duty. Another DOD-sponsored survey indicated that the potential for income loss during an activation was a major concern for both officers and enlisted personnel in the reserves. Lawrence Kapp, Congressional Research Service, Library of Congress, "The Ready Reserve Mobilization Income Insurance Program," Aug. 3, 1998. [<http://congressionalresearch.com/98-652/document.php?study=THE+READY+RESERVE+MOBILIZATION+INCOME+INSURANCE+PROGRAM>].

<sup>28</sup> See Illinois Filing Requirements for Military Personnel (Publication 102, January 2020) located on the Illinois Department of Revenue website; <https://www2.illinois.gov/rev/research/publications/pubs/Documents/PUB-102.pdf#search=military>.



1. You are the nonresident spouse of a service member; and
2. You and your service member spouse have the same domicile and you are in Illinois only to accompany your spouse on his or her military assignment; or
3. You elect to use the same domicile as your service member spouse for the purposes of taxation and you are in Illinois, even if your service member spouse is not located with you.

#### **4. Mobile Home Local Services Tax Act – Disabled Veterans Exemption**

A qualified disabled veteran (or his or her spouse or unmarried surviving spouse) who owns and exclusively uses a mobile home is eligible under the Mobile Home Local Services Tax Act for an exemption. As defined in the statute, a “Disabled Veteran” means a person who has served in the Armed Forces of the United States and whose disability is of such a nature that the federal government has authorized payment for purchase or construction of specially adapted housing as set forth in the United States Code, Title 38, Chapter 21, Section 2101.” “Unmarried surviving spouse” means the surviving spouse of the veteran at any time after the death of the veteran during which the surviving spouse is not married.”<sup>29</sup>

“Beginning with the 2015 tax year, the exemption also applies to housing that is specifically constructed or adapted to suit a qualifying veteran's disability if the housing or adaptations are donated by a charitable organization, the veteran has been approved to receive funds for the purchase or construction of Specially Adapted Housing under Title 38, Chapter 21, Section 2101 of the United States Code, and the home has been inspected and certified by a licensed home inspector to be in compliance with applicable standards set forth in U.S. Department of Veterans Affairs.”<sup>30</sup>

#### **5. Property Tax: Introduction to Relief Provisions Under the Property Tax Code**

Under Illinois Property Tax Code (35 ILCS 200), several programs designed to provide property tax relief are available to veterans. Homestead exemptions include the Veterans with Disabilities (for specially adapted housing) exemption under section 15-165, the Returning Veterans exemption under section 15-167, and the Standard Homestead Exemption for Veterans with Disabilities under section 15-169. Veterans should note that other exemptions are also available which are not specific to veterans. Generally, this information is available at the county level by the Chief of County Assessments. Additionally, certain veterans’ organizations qualify for an assessment freeze under section 10-300 and may enjoy an exemption under section 15-145.

Other property tax benefits or exemptions, as the case may be, apply to U.S. Military developments and Military Schools and academies.

Veterans should be aware that counties administer exemptions differently. It is important that veterans communicate with the County Assessment Office to ensure a full understanding of

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<sup>29</sup> 35 ILCS 515/7.5.

<sup>30</sup> Veterans Benefits Administration Pamphlet 26-13, Handbook for Design of Specially Adapted Housing and Special Housing Adaptation Projects (rev. June 2019).

required forms and timelines. Additionally, these exemptions are often annually amended. Veterans should not automatically assume the same process and deadlines apply from year to year. Additional information can be found on the Illinois Department of Revenue website.

## **6. Property Tax: Returning Veterans Homestead Exemption**

### **Eligibility**

For the 2007 taxable year and thereafter, a homestead exemption is provided to eligible returning veterans. The exemption is a one-time \$5,000 reduction in the equalized assessed value (EAV) on the veteran's primary residence. The \$5,000 reduction is to be provided "only for the taxable year in which the veteran returns from active duty in an armed conflict involving the Armed Forces of the United States". The term "veteran" is defined as "an Illinois resident who has served as a member of the United States Armed Forces, a member of the Illinois National Guard, or a member of the United States Reserve Forces."

### **Interaction with Other Exemptions**

The exemption for returning veterans is in addition to any other homestead exemption provided in Article 15 of the Property Tax Code.<sup>31</sup>

### **Application**

Returning veterans can claim the exemption by filing Form PTAX-341 *Application for Returning Veterans' Homestead Exemption* with their county assessment office. The determination of eligibility is made by the county assessment office.<sup>32</sup> Additional information on this benefit is available on the website of the Illinois Department of Revenue.

## **7. Property Tax: Standard Homestead Exemption for Veterans with Disabilities**

### **Eligibility**

"'Qualified residence' means real property, but less any portion of that property that is used for commercial purposes, with an equalized assessed value of less than \$250,000 that is the primary residence of the veteran with a disability. Property rented for more than 6 months is presumed to be used for commercial purposes."<sup>33</sup> "Veteran" is defined as "an Illinois resident who has served as a member of the United States Armed Forces on active duty or State active duty, a member of the Illinois National Guard, or a member of the United States Reserve Forces and who has received an honorable discharge."<sup>34</sup>

For the 2015 tax year and following (see summary tables below), a \$2,500 reduction is available to a veteran with a service-connected disability of at least 30% but less than 50%; a \$5,000 reduction is to be provided for veterans with a service-connected disability of at least 50%, but less than 70%; and a total exemption from paying property taxes on a primary residence is to be

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<sup>31</sup> 35 ILCS 200/15-167.

<sup>32</sup> 35 ILCS 200/15-167(c).

<sup>33</sup> 35 ILCS 200/15-169.

<sup>34</sup> *Id.*

provided for those veterans with a service-connected disability of at least 70%. For taxable year 2020 and thereafter, if the person qualifying for the exemption does not occupy the qualified residence as of January 1 of the taxable year, the exemption granted shall be prorated on a monthly basis. Prorated exemption shall apply with the first complete month in which the person occupied the residence. Effective May 2022, if a veteran has a combined service connected disability rating of 100% and is deemed to be permanently and totally disabled, as certified by the United States Department of Veterans Affairs, the taxpayer who has been granted the exemption shall no longer be required to reapply for the exemption on an annual basis. The exemption shall be in effect for as long as the exemption would otherwise be permitted by 35 ILCS 200/15-169.<sup>35</sup>

The benefits under this section may carry over to the surviving spouse of the veteran, if the surviving spouse “holds the legal or beneficial title to the homestead, permanently resides thereon, and does not remarry.”<sup>36</sup> In certain circumstances, the surviving spouse may transfer the benefit to a new residence. Also, beginning in taxable year 2015, the exemption is available to the surviving spouse of a veteran who is killed in the line of duty but did not apply for the exemption before their death. For taxable year 2023 and thereafter, the surviving spouse of a veteran who did not obtain an exemption before death, but would have qualified for the exemption during the taxable year, will be eligible to apply for the property tax exemption.

If the taxpayer is the surviving spouse of a veteran whose death was determined to be service-connected and who is certified by the United States Department of Veteran Affairs as a recipient of dependency and indemnity compensation under federal law, then the property is exempt from taxation.<sup>37</sup>

In the event that a qualified veteran enters a nursing home facility, the exemption may continue on the primary residence as long as the surviving spouse continues to reside in the residence or in the case where the residence remains unoccupied.<sup>38</sup>

### **Interaction with Other Exemptions**

The exemption for disabled veterans cannot be received if the veterans are receiving the Disabled Persons’ Homestead Exemption,<sup>39</sup> or the Disabled Veterans Specially Adapted Housing Tax Exemption.<sup>40</sup>

### **Application**

Disabled veterans or a surviving spouse can claim the exemption by filing Form PTAX-342 *Application for the Standard Homestead Exemption for Veterans with Disabilities* with their County Assessment Office. The determination of eligibility is made by the County Assessment Office.

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> 35 ILCS 200/15-168.

<sup>40</sup> 35 ILCS 200/15-165.

## 8. Property Tax: Disabled Veterans Specially Adapted Housing Tax Exemption

### Eligibility

A generous but specialized homestead exemption is provided for houses specially adapted for the disabled veteran.<sup>41</sup> Property up to an assessed value of \$100,000 is exempt from property tax. The benefits under this section apply when such a property is “owned and used exclusively by a veteran with a disability, or the spouse or unmarried surviving spouse of the veteran, as a home.”<sup>42</sup>

Furthermore, to be eligible, one of the following situations must apply:

- **Federal Specially Adapted Housing Funds Are Used.** “The exemption applies to housing where federal funds have been used to purchase or construct special adaptations to suit the veteran's disability.” “The exemption also applies to housing that is specially adapted to suit the veteran's disability, and purchased entirely or in part by the proceeds of a sale, casualty loss reimbursement, or other transfer of a home for which the Federal Government had previously authorized payment for purchase or construction as Specially Adapted Housing. However, the entire proceeds of the sale, casualty loss reimbursement, or other transfer of that housing shall be applied to the acquisition of subsequent specially adapted housing to the extent that the proceeds equal the purchase price of the subsequently acquired housing.”
- **Donations by Charitable Organizations.** “Beginning with the 2015 tax year, the exemption also applies to housing that is specifically constructed or adapted to suit a qualifying veteran's disability if the housing or adaptations are donated by a charitable organization, the veteran has been approved to receive funds for the purchase or construction of Specially Adapted Housing under Title 38, Chapter 21, Section 2101 of the United States Code, and the home has been inspected and certified by a licensed home inspector to be in compliance with applicable standards set forth in U.S. Department of Veterans Affairs, Veterans Benefits Administration Pamphlet 26-13 Handbook for Design of Specially Adapted Housing. For purposes of this Section, “charitable organization” means any benevolent, philanthropic, patriotic, or eleemosynary entity that solicits and collects funds for charitable purposes and includes each local, county, or area division of that charitable organization.”

### Interaction with Other Exemptions

The exemption for disabled veterans cannot be received if the veteran is receiving the Disabled Persons' Homestead Exemption,<sup>43</sup> or the Disabled Veterans Standard Homestead Exemption.<sup>44</sup> Eligibility for this benefit is determined annually by the Illinois Department of Veterans' Affairs. Additional information on this benefit is available on the website of the Illinois Department of Veterans' Affairs, <http://www.veterans.illinois.gov/benefits/realestate.htm>.

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<sup>41</sup> 35 ILCS 200/15-165.

<sup>42</sup> *Id.*

<sup>43</sup> 35 ILCS 200/15-168.

<sup>44</sup> 35 ILCS 200/15-169.

## **Annual Re-Certification by the Illinois Department of Veterans Affairs**

This exemption must be reestablished on an annual basis by certification from the Illinois Department of Veterans' Affairs to the Department, which shall forward a copy of the certification to local assessing officials.

### **9. Property Tax: Surviving Spouse of a Service Member Killed in the Line of Duty**

Also, beginning in 2015 and in future years, an unmarried surviving spouse of a service member who is killed in the line of duty is exempt from paying property taxes on his or her primary residence. As with the other exemptions, a surviving spouse must file a timely, annual supplemental application with their local assessment authority to continue to receive this exemption.

## **J. Miscellaneous**

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### **1. Concealed Carry Weapons Applications (Credit for Military Service)**

#### **Overview**

The Firearm Concealed Carry Act, 430 ILCS 66 (PA 98-63) became law in Illinois on July 9, 2013. This law requires an Illinois Concealed Carry License for an individual to carry a concealed firearm in the State of Illinois. Although a complete description of the requirements of an application license is beyond the scope of the present publication, one provision aimed at veterans, retirees, and service members is worth highlighting.

The Act requires an applicant to obtain sixteen hours of certified firearms training that covers firearm safety; the basic principles of marksmanship; care, cleaning, loading, and unloading of a concealable firearm; all applicable State and federal laws relating to the ownership, storage, carry, and transportation of a firearm; and instruction on the appropriate and lawful interaction with law enforcement while transporting or carrying a concealed firearm.

#### **Eight Hours of Credit for Prior Military Service**

The Act provides an exception to the sixteen-hour training requirement. The Act provides eight hours of credit towards the sixteen hours as follows:

- (i) The Department and certified firearms instructors shall recognize 8 hours of training as completed toward the 16 hour training requirement under this Section, if the applicant is an active, retired, or honorably discharged member of the United States Armed Forces. Any remaining hours that the applicant completes must at least cover the classroom subject matter of paragraph (4) of subsection (b) of this Section [i.e. instruction in all applicable State and federal laws relating to the ownership, storage, carry,

and transportation of a firearm], and the range qualification in subsection (c) of this Section.<sup>45</sup>

## **2. Expungement of Prior Class 3 or 4 Felonies for Honorably Discharged Service Members**

Effective August 16, 2013, PA 98-0399 added a new section to the Unified Code of Corrections that provides that an individual may seek to expunge a Class 3 or Class 4 felony conviction that occurred prior to a tour of duty in the U.S. Armed Forces or National Guard of this or any other state and for which he or she received an honorable discharge.<sup>46</sup>

To be eligible, a veteran must have served “in the United States Armed Forces or National Guard of this or any other state and had received an honorable discharge from the United States Armed Forces or National Guard or who at the time of filing the petition is enlisted in the United States Armed Forces or National Guard of this or any other state and served one tour of duty.”<sup>47</sup> A veteran may not apply if (1) convicted of a sex offense described in Article 11 or Sections 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 or Criminal Code of 2012, (2) convicted of an offense under the Criminal Code of 1961 or Criminal Code of 2012 involving a firearm, (3) convicted of a crime of violence as defined in Section 2 of the Crime Victims Compensation Act OR (4) the person has not served in the United States Armed Forces or National Guard of this or any other state or has not received an honorable discharge from the United States Armed Forces or National Guard of this or any other state or who at the time of the filing of the petition is serving in the United States.<sup>48</sup> If a petition for expungement is denied, an applicant must wait another four years before filing for an expungement or pardon unless the Governor or Chairman of the Prisoner Review Board grants a waiver.<sup>49</sup> All other policies and procedures of the expungement process apply.

## **3. Flag Displays**

### **Flag Displays and Condominium Associations**

The Condominium Property Act provides a qualified right to fly the U.S. flag or a military flag.<sup>50</sup> See the cited provision of the Act for more details.

### **Official Notices to Fly Flags at Half-Staff**

Under Illinois' Flag Display Act, the Illinois Department of Veterans' Affairs has the duty to inform the Governor of the death by hostile fire of an Illinois resident member of the United States Armed Forces. The Governor, in turn, has the responsibility to issue an official notice to fly the U.S. flag, the State flag of Illinois, and, in the case of the death of the member of the United States Armed Forces, the appropriate military flag as defined in subsection (b) of Section 18.6 of the Condominium Property Act at half-staff. (Under the Condominium Property Act, "Military flag" means a flag of any branch of the United States Armed Forces or the Illinois National Guard made

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<sup>45</sup> 430 ILCS 66/75(i).

<sup>46</sup> 730 ILCS 5/3-3-2(a)(11)

<sup>47</sup> 730 ILCS 5/3-3-2(a)(11)

<sup>48</sup> 730 ILCS 5/3-3-2(a)(11)

<sup>49</sup> 730 ILCS 5/3-3-2(a)(11)

<sup>50</sup> 765 ILCS 605/18.6

of fabric, cloth, or paper displayed from a staff or flagpole or in a window, but "military flag" does not include a depiction or emblem of a military flag made of lights, paint, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component.")

In 2015, this portion of the Flag Display Act was amended to include that the Governor shall also issue such official notice to fly flags at half-staff in the case of a resident of this state killed during on-duty training for active military duty.<sup>51</sup>

## **4. Hunting Licenses and Veterans**

The law provides that any Illinois resident returning from a Federal mobilization or other service abroad as a member of either the United States Armed Forces, the Illinois National guard or the Reserves of the United States Armed Services may hunt certain protected species without paying any fees to obtain a hunting license if the Illinois resident applies for a hunting license within two years of returning from the service abroad or federal mobilization.<sup>52 53</sup> For each year spent abroad or federally mobilized, the resident is entitled to one free hunting license, one free Deer Hunting Permit and one free State Habitat Stamp.<sup>54</sup> Additionally, an Illinois resident who is also a veteran may obtain an Illinois Hunter Education card upon completion of the online study section of the Illinois Hunter Education program and after providing acceptable verification of service or mobilization.<sup>55</sup>

## **5. Illinois Patriot Law**

Public Act 98-0248 directs the Department of Military Affairs to establish a recognition program to allow the Governor or the Adjutant General to recognize individuals or organizations who have contributed to the advancement of the Illinois National Guard.<sup>56</sup>

## **6. Licensure**

### **Admission of Military Spouse Attorneys from Other Jurisdictions**

#### **RULE 719. Admission of Military Spouse Attorneys from Other Jurisdictions**

**(a) Eligibility.** A lawyer admitted to the practice of law in another state or the District of Columbia who meets the educational requirements of Rule 703 may receive a license to practice law in this state if the lawyer is:

(1) identified by the Department of Defense (or, for the Coast Guard when it is not operating as a service in the Navy, by the Department of Homeland Security) as the spouse of a service member of the United States Uniformed Services; and/or is a party to a civil union with a service member pursuant to the Illinois Religious Freedom Protection and Civil Union Act; and

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<sup>51</sup> 5 ILCS 465/10(a) (amended by P.A. 99-0372).

<sup>52</sup> Protected species are outlined in 520 ILCS 5/2.2.

<sup>53</sup> 520 ILCS 5/3.1-4

<sup>54</sup> 520 ILCS 5/3.1-4

<sup>55</sup> 520 ILCS 5/3.1-4

<sup>56</sup> 20 ILCS 1805/13.5

(2) residing—or intends, within the next six months, to be residing—in Illinois due to the service member's military orders for a permanent change of station to the State of Illinois.

**(b) Application Requirements.** To qualify for the license, the applicant must file with the Board of Admissions to the Bar the following:

(1) a completed application for license and a completed character and fitness registration application in the form prescribed by the Board;

(2) a certificate of good standing from the highest court of each jurisdiction of admission;

(3) a certificate from the disciplinary authority of each jurisdiction of admission which:

(a) states that the applicant has not been suspended, disbarred or disciplined and that no charges of professional misconduct are pending; or

(b) identifies any suspensions, disbarments, or disciplinary sanctions and any pending charges;

(4) a copy of the service member's military orders reflecting a permanent change of station to a military installation in Illinois; and

(5) such other affidavits, proofs and documentation as may be prescribed by the Board.

**(c) Fee Waiver.** The requisite fees in accordance with Rule 706 will be waived for all lawyers complying with the requirements of Rule 719.

**(d) Character and Fitness Approval.** Each applicant for a license under this rule must receive certification of good moral character and general fitness to practice law by the Committee on Character and Fitness in accordance with the provisions of Rule 708.

**(e) Certification by the Board.** In the event the Board of Admissions to the Bar shall find that the applicant meets the requirements of this rule and has received from the Committee on Character and Fitness its certification of good moral character and general fitness to practice law, the Board shall certify to the Court that such applicant is qualified for licensure.

**(f) Duration and Termination of License.** The license and authorization to perform legal services under this rule shall be limited by the earliest of the following events:

(1) the service member is no longer a member of the United States Uniformed Services;

(2) the military spouse attorney is no longer married to the service member;



(3) a change in the service member's military orders reflecting a permanent change of station to a military installation other than Illinois, except that if the service member has been assigned to an unaccompanied or remote assignment with no dependents authorized, the military spouse attorney may continue to practice pursuant to the provisions of this rule until the service member is assigned to a location with dependents authorized; or

(4) the lawyer is admitted to the general practice of law under any other rule of this Court.

In the event that any of the events listed in subparagraph (f)(1)-(3) occur, the attorney licensed under this rule shall notify the clerk of the Supreme Court of the event in writing within one year of the date upon which the event occurs and upon such notification, the license and authorization to perform services under this rule shall be terminated.

**(g) Annual Registration.** Once the Court has conferred a license to perform legal services under this rule, the lawyer must register with the Attorney Registration and Disciplinary Commission and pay the fee for active lawyers set forth in Rule 756 for the year in which the license is conferred and for any subsequent year into which the license extends.

**(h) Discipline.** All lawyers licensed under this rule shall be subject to the jurisdiction of the Court for disciplinary purposes to the same extent as all other lawyers licensed to practice law in this state.

**(i) Credit Toward Admission on Motion.** The period of time a lawyer practices law while licensed under this rule shall be counted toward his or her eligibility for admission on motion under Rule 705.<sup>57</sup>

### **Commercial Drivers Licenses (CDLs)**

**Current Service Members.** Current service members (i.e., non-civilian personnel including drivers on active military duty, and members of the federal reserves or the National Guard on part-time duty as well as National Guard military technicians) do not need a commercial driver's license (CDL) if they are driving U.S. Department of Defense military vehicles for military purposes.

### **Expedited CDL Licensure (Military Skills Waiver Program).**

Effective January 1, 2014, the Illinois Secretary of State implemented a military skills test waiver program that allows for expedited CDL licensure for former or current military personnel to seek a CDL for civilian employment purposes. Current or recently discharged military personnel who wish to obtain an Illinois Commercial Driver's License (CDL) and meet the necessary requirements will have the opportunity to have their skills testing (pre-trip, skills and road) waived. Following the successful completion of all the written testing and the payment of applicable fees, the skills testing will be waived for qualified applicants. To qualify the applicant must submit a fully completed and acceptable Application for Military Skills Test Waiver signed by their Commanding

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<sup>57</sup> Adopted June 18, 2013, eff. July 1, 2013.

Officer within 12 months of discharge. Download the [Application for Military Skills Test Waiver](#). For further information, contact your local [CDL Secretary of State Facility](#).

### **Drivers Licenses (Veteran Designation)**

For information about the new program for obtaining a “veterans” designation on an Illinois Driver’s License, go to the following address on the Illinois Department of Veterans’ Affairs website: <http://www.illinois.gov/veterans/benefits/Pages/Veteran-Driver's-License.aspx>.

### **Emergency Medical Technicians (EMTs)**

**Military Education & Experience Counts towards EMT Licensure.** The Illinois Department of Public Health (IDPH) is required to recognize a candidate’s military emergency medical training, emergency medical curriculum completed, and clinical experience as spelled out in the Emergency Medical Services (EMS) Systems Act:

(d) The Department shall have the authority and responsibility to:

...

(2.5) Review applications for EMS personnel licensure from honorably discharged members of the Armed Forces of the United States with military emergency medical training. Applications shall be filed with the Department within one year after military discharge and shall contain: (i) proof of successful completion of military emergency medical training; (ii) a detailed description of the emergency medical curriculum completed; and (iii) a detailed description of the applicant's clinical experience. The Department may request additional and clarifying information. The Department shall evaluate the application, including the applicant's training and experience, consistent with the standards set forth under subsections (a), (b), (c), and (d) of Section 3.10. If the application clearly demonstrates that the training and experience meets such standards, the Department shall offer the applicant the opportunity to successfully complete a Department-approved EMS personnel examination for the level of license for which the applicant is qualified. Upon passage of an examination, the Department shall issue a license, which shall be subject to all provisions of this Act that are otherwise applicable to the level of EMS personnel license issued.<sup>58</sup>

**Eligibility for Waiver of EMT Fees for Guardsmen:** The Emergency Medical Services (EMS) Systems Act allows service members of the Illinois National Guard to be eligible for a waiver of the EMT license fee.. The relevant portion of the Act reads as follows:

An EMR, EMD, EMT, EMT-I, A-EMT, Paramedic, ECRN, or PHRN who is a member of the Illinois National Guard or an Illinois State Trooper or who exclusively serves as a volunteer for units of local government with a population base of less than 5,000 or as a volunteer for a not-for-profit organization that serves a service area with a population base of less than 5,000 may submit an application to the Department for a waiver of the fees described under paragraph (7) of subsection (d) of this Section on a form prescribed by the Department.<sup>59</sup>

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<sup>58</sup> 210 ILCS 50/3.50(d)(2.5).

<sup>59</sup> 210 ILCS 50/3.50(d-5).

**Right to Suspend Educational Requirement Due to Military Service:** Finally, the EMS Systems Act allows a right for service members temporarily to suspend the educational requirements due to military service as follows:

The education requirements prescribed by the Department under this Section must allow for the suspension of those requirements in the case of a member of the armed services or reserve forces of the United States or a member of the Illinois National Guard who is on active duty pursuant to an executive order of the President of the United States, an act of the Congress of the United States, or an order of the Governor at the time that the member would otherwise be required to fulfill a particular education requirement. Such a person must fulfill the education requirement within 6 months after his or her release from active duty.<sup>60</sup>

### **Illinois Military Family Licensing Act**

Effective January 1, 2013, the new Illinois Military Family Licensing Act (P.A. 97-0710) amends both the Civil Administrative Code of Illinois at 20 ILCS 5/5-715 (*new*), and the School Code at 105 ILCS 5/21B-20 to provide for the expedited licensure of service members and spouses who are forced to move to the state due to military service. The director of each department (under the Governor) is given authority to issue temporary occupational or professional licenses upon certain conditions.

## **7. Liquor Sales**

**Military Stations, Veterans Homes, and Retail Liquor Sales.** Liquor licenses generally shall not issue for the sale at retail of any alcoholic liquor within 100 feet of any military station or veterans' home, among other types of places.<sup>61</sup> Some exceptions apply.

## **8. Location of Gaming Terminals in Veterans Establishments**

This law applies to licensed veterans establishments and establishes rules for the placement of video game terminals in such establishments.<sup>62,63</sup> This Act requires licensed veterans establishments to enter into a written use agreement with the terminal operator and states that an establishment may not have more than five gaming terminals on the premises.<sup>64</sup> The Act imposes strict limits on allowable proximity to facilities operated by an organization license, other gambling facilities (examples include but are not limited to off-track centers, casinos, and horse tracks), schools and places of worship.<sup>65</sup> However, exceptions will be made if the veterans establishment

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<sup>60</sup> 210 ILCS 50/3.50(d-5), 2<sup>nd</sup> paragraph.

<sup>61</sup> 235 ILCS 5/6-11.

<sup>62</sup> "Licensed veterans establishment" means the location where a qualified veterans organization that derives its charter from a national veterans organization regularly meets. 230 ILCS 40/5

<sup>63</sup> "Video gaming terminal" means any electronic video game machine that, upon insertion of cash, electronic cards or vouchers or any combination thereof, is available to play or simulate the play of a video game, including but not limited to video poker, line up, and blackjack, as authorized by the Board utilizing a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash. The term does not include a machine that directly dispenses coins, cash, or tokens or is for amusement purposes only. 230 ILCS 40/5

<sup>64</sup> 230 ILCS 40/25

<sup>65</sup> 230 ILCS 40/25

is either licensed or obtains its original liquor license prior to the other building.<sup>66</sup> This Act also imposes strict limits on how profits generated by the video game terminal are to be split between the terminal operator and the veterans establishment.<sup>67</sup>

## **9. Military Holidays**

### **Flag Day**

“June 14, commonly known as Flag Day, is established as a day to be observed with fitting patriotic exercises in schools, colleges, universities, societies, clubs, and other organizations. On that day the Flag of the United States of America shall be appropriately displayed on all public buildings within the State of Illinois. It is also fitting that, as a symbol of the guarantee of the sanctity of the home, the flag be displayed from every home on that day and that, as a symbol of the guarantee of freedom of worship, public recognition be made in all places of worship on June 14th or on the Sunday preceding.” The day also commemorates the anniversary of the U.S. Army.

### **Gold Star Mother’s Day**

“The Governor shall annually designate by official proclamation the last Sunday in September as Gold Star Mothers’ Day to be observed throughout the State as a day to honor and commemorate the mothers of men and women who gave their lives while serving with the Armed Forces of the United States in time of war or during a period of hostilities.”<sup>68</sup>

### **Independence Day**

#### **Public Employees Under the Personnel Code**

Any state employee covered by the Personnel Code is entitled to a paid day off for Independence Day.<sup>69</sup>

### **Korean War Armistice Day**

The 27th day of July of each year is designated Korean War Armistice Day to be observed throughout the State as a day to honor and remember the men and women of this State who served so valiantly in the cause of freedom.<sup>70</sup>

### **Memorial Day**

#### **Public Employees Under the Personnel Code**

Any state employee covered by the Personnel Code is entitled to a paid day off for Memorial Day.<sup>71</sup>

### **POW/MIA Recognition Day**

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<sup>66</sup> 230 ILCS 40/25

<sup>67</sup> 230 ILCS 40/25

<sup>68</sup> 5 ILCS 490/50.

<sup>69</sup> 80 Ill. Admin. Code §303.190.

<sup>70</sup> 5 ILCS 490/100.

<sup>71</sup> 80 Ill. Admin. Code §303.190.

POW/MIA Recognition Day is the third Friday of September in each year. This recognition day is to be observed throughout the State as a day in honor and remembrance of the men and women of this State who were recognized as POWs or MIAs while serving with the Armed Forces of the United States in a time of war or during a period of hostilities.<sup>72</sup>

### **Pearl Harbor Remembrance Day**

“December 7th of each year is designated as Pearl Harbor Remembrance Day to be observed throughout the State as a day set apart for appropriate ceremonies in honor and remembrance of the veterans who served so valiantly at Pearl Harbor on December 7, 1941.”<sup>73</sup>

### **Purple Heart Day**

“The 7th day of August of each year is designated Purple Heart Day to be observed as a day to honor and remember those who have been wounded or killed in battle.”<sup>74</sup>

### **Veterans Day**

“The eleventh day of November of each year shall be a holiday to be known as Veterans Day and to be observed throughout the State as a day to hold appropriate exercises in commemoration of the victory of the United States Army, the United States Navy, the United States Air Force, the United States Marines, the United States Coast Guard, and the United States Merchant Marines in all wars.”<sup>75</sup>

#### **Veterans’ Day Moment of Silence at School**

If a school holds any type of event at the school on November 11, Veterans' Day, the school board shall require a moment of silence at that event to recognize Veterans' Day.<sup>76</sup>

#### **Public Employees Under the Personnel Code**

Any state employee covered by the Personnel Code is entitled to a paid day off for Veterans Day.<sup>77</sup>

### **Viet Nam War Veterans Day**

“The 29th day of March of each year is designated a commemorative holiday to be known as Viet Nam War Veterans Day and to be observed throughout the State as a day in honor and remembrance of the men and women of this Nation who served so valiantly in the cause of freedom.”<sup>78</sup>

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<sup>72</sup> 5 ILCS 490/105.

<sup>73</sup> 5 ILCS 490/71.

<sup>74</sup> 5 ILCS 490/165.

<sup>75</sup> 5 ILCS 490/90.

<sup>76</sup> 105 ILCS 5/10-20.46.

<sup>77</sup> 80 Ill. Admin. Code §303.190.

<sup>78</sup> 5 ILCS 490/95.

## 10. Recording of Discharge Certificates

While not required, there are those who encourage the official filing of a veteran's proof of his or her prior service. Today, this proof typically takes the form of the DD 214. One such method of filing is to provide a copy of the DD 214 to the Illinois Department of Veterans Affairs, which will keep it on file and, in turn, provide copies with a certification stamp. Another method, discussed more here, is to go to your local county government building and have the appropriate copy (the "MEMBER-4" copy) of the DD 214 recorded.

Under the Illinois Counties Code, a county recorder must accept for recording in a separate book for such purpose, a copy of a former service member's certificate of release or discharge from active duty for those who were honorably discharged.<sup>79</sup> In counties with population over 500,000, individuals can get a free copy of the certificate so filed. Additional copies are provided at \$1.25 each.

Unlike certain other documents, access to the filed certificates is governed, among any other relevant law, by the federal Privacy Act of 1974. The documents are not open to general public inspection. "These documents shall be accessible only to the person named in the document, the named person's dependents, the county veterans' service officer, representatives of the Department of Veterans' Affairs, or any person with written authorization from the named person or the named person's dependents."

## 11. State Park Admission

Under the Department of Veterans Affairs Act, certain qualified disabled veterans and former prisoners of war (POWs) who are residents of Illinois may qualify for an exemption from all camping and admission fees in parks under the control of the Department of Natural Resources.

To qualify as a disabled veteran under this provision, the individual must be "one who is permanently disabled from service connected causes with 100% disability or one who has permanently lost the use of a leg or both legs or an arm or both arms or any combination thereof or any person who is so severely disabled as to be unable to move without the aid of crutches or a wheelchair."<sup>80</sup>

An individual who seeks to apply as a qualified disabled veteran shall present an award letter or some other identifying document, along with proper identification, to any office of the Illinois Department of Veterans' Affairs. Subject to the approval of the Illinois Department of Natural Resources, the Department of Veterans' Affairs shall provide the form or permit identifier to be issued.

To qualify as a former prisoner of war, an individual must be "a veteran who was taken and held prisoner by a hostile foreign force while participating in an armed conflict as a member of the United States Armed Forces. Any identification card or other form of identification issued by the Veterans' Administration or other governmental agency which indicates the card-holder's former prisoner of war status shall be sufficient to accord such card-holder the fee-exempt admission or camping privileges under this subsection."

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<sup>79</sup> 55 ILCS 5/3-5015

<sup>80</sup> 20 ILCS 2805(a).

## 12. Vehicle Registration

PA 99-0032 amended the Illinois Vehicle Code at 625 ILCS 5/3-415 regarding registrations and returning combat mission veterans. “Beginning in registration year 2017, the application for renewal, and subsequent fees, of a vehicle registration for a member of the active-duty or reserve component of the United States Armed Forces returning from a combat mission shall not be required for that service member’s next scheduled renewal. Proof of combat mission service shall come from the service member’s hostile fire pay or imminent danger pay documentation received any time in the 12 months preceding the registration renewal. Nothing in this subsection is applicable to the additional fees incurred by specialty, personalized, or vanity license plates.”<sup>81</sup>

## 13. Veteran-Owned Businesses

### IDCEO Small Business Loans

Effective July 19, 2010, Public Act 96-1106 adds veteran-owned businesses to the list of businesses eligible for small business loans through the IDCEO.<sup>82</sup> Under that provision, “veteran” is defined as “an Illinois resident who has served as a member of the United States Armed Forces on active duty or State active duty, a member of the Illinois National Guard, or a member of the United States Reserve Forces and who has received an honorable discharge.”<sup>83</sup> A “veteran small business” is one that in the Department of Commerce and Economic Opportunity’s judgment is at least 51% owned and managed by one or more individuals who are veterans.<sup>84</sup> IDCEO provides a Minority/Women/Disabled/Veteran Owned Business Participation Loan Program (MWDV PLP).<sup>85</sup> To begin the process of applying for the MWDV PLP, a veteran owned business must reach out to a participating lender and apply through that lender.<sup>86, 87</sup>

### State Procurement Budgets Set-Aside Goal for Certified Veteran-Owned Businesses

The Illinois Procurement Code states that it is the goal of the State of Illinois to promote the participation of veteran-owned small businesses (VOSB) and service-disabled veteran-owned small businesses (SDVOSB) in the State’s procurement process as both prime contractors and subcontractors. This same provision of the Procurement Code states that not less than three percent of the total dollar amount of State contracts, as defined by the Director of Central Management Services, shall be established as a goal to be awarded to SDVOSB and VOSB.

To qualify as a SDVOSB, a business must be 51% owned by one or more qualified service-disabled veterans or qualified veterans living in Illinois. The business also must have less than \$75 million in annual gross sales. To qualify as a VOSB, the same criteria must be met, with the exception that the veteran need not be service disabled.

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<sup>81</sup> 625 ILCS 5/3-806.7

<sup>82</sup> 30 ILCS 750/9-2.

<sup>83</sup> 30 ILCS 750/9-2(o).

<sup>84</sup> 30 ILCS 750/9-4.3(a).

<sup>85</sup> MDWDV PLP Website: <https://www.illinois.gov/dceo/Pages/ParticipationLoanProgram.aspx>

<sup>86</sup> MDWDV PLP Fact Sheet:

[https://www.illinois.gov/dceo/Documents/WParticipation\\_Loan\\_Program\\_052212.pdf](https://www.illinois.gov/dceo/Documents/WParticipation_Loan_Program_052212.pdf)

<sup>87</sup> MDWDV PLP Participating Lenders List: <https://www.illinois.gov/dceo/Pages/ParticipatingInstitutions.aspx>

The Department of Central Management Services is assigned responsibility under the Procurement Code to adopt rules to implement compliance with these provisions. CMS works to meet these goals through the Veterans Business Program (VBP). For more information about VBP, consult CMS's webpage at the following location:

<https://www.illinois.gov/cms/business/sell2/Pages/VeteranownedBusinesses.aspx>.

## **14. Veterans Treatment Courts**

### **Overview**

The General Assembly of Illinois recognizes the invaluable role that veterans and service members play in our society.<sup>88</sup> The General Assembly also recognizes that this role and the service provided sometimes leave veterans and service members with unseen wounds.<sup>89</sup> These wounds can range from post-traumatic stress disorder, traumatic brain injury, depression, drug and alcohol dependency or addiction to co-occurring mental illness and substance abuse problems.<sup>90</sup> With this in mind, Illinois created the Veteran Treatment Court program to provide to veterans and service members accused of crimes suitable punishment while also bringing together a variety of resources to treat underlying problems.<sup>91</sup>

The Veterans and Servicemembers Court Treatment Act currently provides the authority to create either a stand-alone veterans treatment court (VTC) or a program (which we can refer to as a “veterans’ track”) within another problem-solving court such as a drug court or a mental health court. In Illinois, there are approximately twelve programs in the State that have either a VTC or a veterans’ track within another problem-solving court. There currently appears to be at least sixteen Illinois counties with such programs, including: Cook; Christian; DuPage; Effingham; Kankakee; Lake; Madison; McHenry; Peoria (home of the 10th Judicial Circuit VTC covering Peoria, Marshall, Putnam, Stark, and Tazewell counties; St. Clair; Will; and Winnebago.

VTC and “veterans’ tracks” in problem-solving courts trace their origin back to Buffalo, New York, where the first program was created in 2008. Soon after, Cook County joined in this emerging national trend. The programs are generally diversionary, recognizing that veterans face special problems and that a “team approach” (including a focus of VA-related services) can achieve significant results at reasonable cost. This involvement in military culture also appears to keep veteran recidivism rates down.

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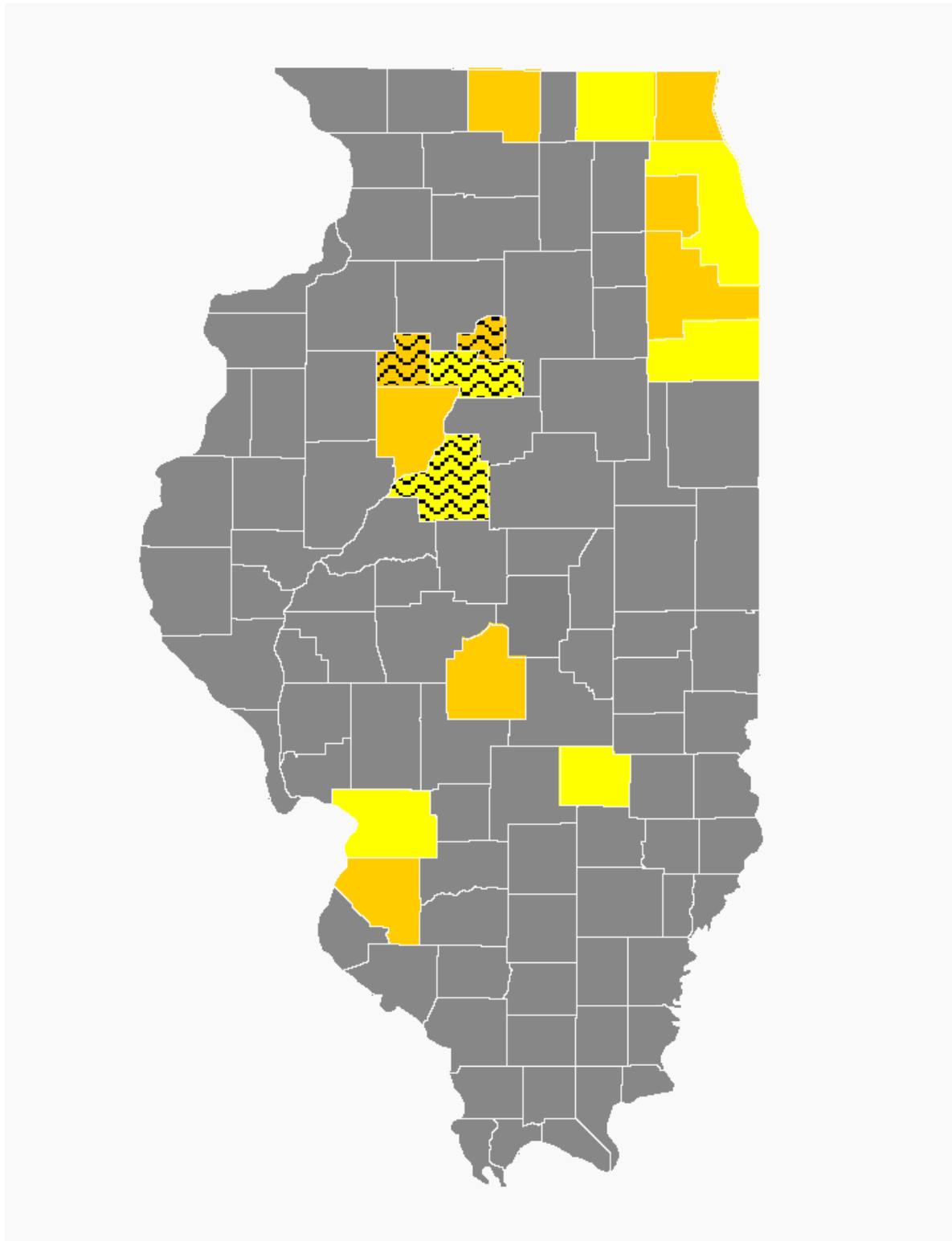
<sup>88</sup> 730 ILCS 167/5

<sup>89</sup> 730 ILCS 167/5

<sup>90</sup> 730 ILCS 167/5

<sup>91</sup> 730 ILCS 167/5





**Figure 4-J-1.** Statewide overview of existing VTCs and “Veterans’ Tracks” (counties with pattern design belong to the 10<sup>th</sup> Judicial District’s Program, which, is principally active in Peoria County).<sup>92</sup>

<sup>92</sup> [Map of Illinois with Counties - Single Color](#) by [FreeVectorMaps.com](#).

### **Eligibility for Participation**

To have his or her case transferred to the Veterans and Service members Court program, a defendant must be (1) either a veteran or a current service member, (2) appearing before an Illinois state court AND (3) eligible for probation. A defendant is not eligible for this program if (1) the crime is a crime of violence (as defined in the statute), (2) the defendant does not demonstrate a willingness to participate in a treatment program OR (3) the defendant has been convicted of a crime of violence (as defined in the statute) within the past ten years (excluding incarceration time).<sup>93</sup> Program participation is contingent on the court, prosecutor and defendant all agreeing to allow the defendant entry into the program.<sup>94</sup>

Most recently, the Act was amended by PA 99-0314 to introduce a definition of the role of “peer recovery coach.” A “peer recovery coach” is “a volunteer veteran mentor assigned to a veteran or service member during participation in a veteran treatment court program who has been trained and certified by the court to guide and mentor the participant to successfully complete the assigned requirements.”<sup>95</sup>

A county board may pass an ordinance or resolution requiring criminal defendants to pay a \$10 fee upon judgment of guilt or a grant of supervision to be deposited in the county general fund and used to finance the county mental health court, county drug court, veterans and service members court, or any or all of the above.<sup>96</sup>

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<sup>93</sup> 730 ILCS 167/5

<sup>94</sup> 730 ILCS 167/5

<sup>95</sup> 730 ILCS 167/10.

<sup>96</sup> 55 ILCS 5/5-1101(d-5).

# Appendix

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# **Appendix A: Illinois Regulations Concerning Military Employment Rights**

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## **1. Military Employment Rights for state employees**

Regulations concerning Military Employment Rights for state employees vary differently for each state employer. Service members should seek information pertaining to military employment regulations from their employer. Please note, not all employer policies may be up to date with recent pieces of law and a review of USERRA and ISERRA should be conducted. These regulations cannot diminish any right or benefit provided by USERRA and ISERRA. Service members and employers can find out more information about military employment rights by contacting the Illinois Attorney General's Military and Veterans Rights Bureau at 1-800-382-3000.

## Appendix B: Sample Requests for Security Freezes

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### 1. Sample Letter to Equifax for Placing a Security Freeze (Must be sent by Certified Mail)

Date

Equifax Security Freeze  
P.O. Box 105788  
Atlanta, GA 30348

Dear Equifax:

I would like to place a security freeze on my credit file. My name is:

My former name was (if applicable):

My current address is:

My address has changed in the past five years. My former address was:

My Social Security number is:

My date of birth is:

I have enclosed photocopies of a government-issued identity card AND proof of residence such as a utility bill or phone bill.

Check one of the following:

I have included a \$10 fee to place a security freeze on my credit file.

I am a senior (at least 65 years old) and the fee does not apply to me.

I am an identity theft victim and a copy of my police report (or other investigative report or complaint to a law enforcement agency concerning identity theft) regarding identity theft is enclosed.

I am a military service member on active duty, and I am attaching a copy of my orders calling me to military service and my orders further extending my period of service, if currently active.

Yours truly,

Your Name

## 2. Sample Letter to TransUnion for Placing a Security Freeze (Must be sent by Certified Mail)

Date

TransUnion Security Freeze  
P.O. Box 2000  
Chester, PA 19022

Dear TransUnion:

I would like to place a security freeze on my credit file. My name is:

My former name was (if applicable):

My current address is:

My address has changed in the past five years. My former address was:

My Social Security number is:

My date of birth is:

I have enclosed photocopies of a government-issued identity card AND proof of residence such as a utility bill or phone bill.

Check one of the following:

I have included a \$10 fee to place a security freeze on my credit file.

I am a senior (at least 65 years old) and the fee does not apply to me.

I am an identity theft victim and a copy of my police report (or other investigative report or complaint to a law enforcement agency concerning identity theft) regarding identity theft is enclosed.

I am a military service member on active duty, and I am attaching a copy of my orders calling me to military service and my orders further extending my period of service, if currently active.

Yours truly,

Your Name

### 3. Sample Letter to Experian for Placing a Security Freeze (Must be sent by Certified Mail)

Date

Experian Security Freeze  
P.O. Box 9554  
Allen, TX 75013

Dear Experian:

I would like to place a security freeze on my credit file. My name is:

My former name was (if applicable):

My current address is:

My address has changed in the past five years. My former address was:

My Social Security number is:

My date of birth is:

I have enclosed photocopies of a government-issued identity card AND proof of residence such as a utility bill or phone bill.

Check one of the following:

I have included a \$10 fee to place a security freeze on my credit file.

I am a senior (at least 65 years old) and the fee does not apply to me.

I am an identity theft victim and a copy of my police report (or other investigative report or complaint to a law enforcement agency concerning identity theft) regarding identity theft is enclosed.

I am a military service member on active duty, and I am attaching a copy of my orders calling me to military service and my orders further extending my period of service, if currently active.

Yours truly,

Your Name

# Appendix C: Sample Employment Letters

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## 1. Notice of Deployment Under USERRA

Mr. John Doe  
Human Resources  
Company ABC  
123 Elm St.  
Anytown, IL 12345

Re: BM2 Joe Veteran, United States Naval Reserve and your employee

Dear Mr. Doe:

I am writing to you concerning your employee, Joe Veteran. Joe is also a member of the Naval Reserve unit that I command.

I am writing to ask you, as Joe Veteran's employer, for your cooperation and support to make it possible for him to participate in essential military training and service. I am enclosing, for your information, a schedule of our unit's training for the current fiscal year (through September). [You can vary this letter to use it for a unit mobilization or unit annual training.]

Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), Mr. Veteran has the right to time off from his civilian job for military training or service. USERRA requires advance notice to the civilian employer, except in unusual circumstances, and the law provides that an appropriate officer of the uniformed service may give such notice. As Joe Veteran's Commanding Officer (CO), I am an appropriate officer, and this letter constitutes sufficient notice under the law.

In the Department of Defense, there is an "Employer Support of the Guard and Reserve" (ESGR) Committee. I invite you to check out the ESGR website for a copy of USERRA and other important information about the Reserve components and employer support. You can find the website at [www.esgr.org](http://www.esgr.org), and you can call the ESGR Committee, toll-free, at 1-800-336-4590.

If you ever have any questions about Mr. Veteran's military service, please feel free to contact me by telephone at xxx-xxx-xxxx or by email at \_\_\_\_\_. On behalf of the Department of Defense, I thank you for your cooperation and support.

Sincerely,  
John Paul Jones  
Captain, United States Naval Reserve  
Commanding Officer

Encl: Deployment Orders



## 2. Notice of Return/Request for Reemployment Under USERRA

Mr. John Doe  
Human Resources  
Company ABC  
123 Elm St.  
Anytown, IL 12345

Re: Application for re-employment under the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301-4333

Dear Mr. Doe:

I began work for your company on [date]. On [date] I gave the company notice of my impending call to active duty in the U.S. military. **[If you gave written notice, attach a copy, if possible. If your notice was oral, provide as much information as possible about when, how, and to whom you gave the notice.]** I have completed my period of service, and I am now applying for re-employment.

I have the right to re-employment under the Uniformed Services Employment and Reemployment Rights Act (USERRA), which you can find in Title 38, United States Code, sections 4301-4333. You can find the text of USERRA, and more details on this law, on the Website of the National Committee for Employer Support of the Guard and Reserve (ESGR). Please see [www.esgr.com](http://www.esgr.com). You can also call ESGR at 1-800-336-4590.

I have attached a copy of my DD-214, showing the date I entered and left active duty and that I was released from duty under honorable conditions. **[If you do not have a DD-214, attach and refer to a copy of your endorsed orders, a letter from your commanding officer, or some other documentation showing the dates and characterization of your military service.]** Please note that I meet USERRA's eligibility criteria as to prior notice, duration and character of service, and timely application for re-employment.

Please accept this letter as my formal application for re-employment. With your permission, I plan to report for work at [insert time and date]. If this is not acceptable to you or you have questions, please call me as soon as possible at [telephone number]. Thank you for your prompt attention to this matter.

Sincerely,  
Joe Veteran

Encl: Deployment Orders

# Appendix D: Sample Consumer Letters

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## 1. Federal SCRA: Sample 6% Interest Rate Cap Letter

(Name and Address of Service member)

(Date)

(Name and Address of Institution)

Re: Interest Rate Reduction for Acct # \_\_\_\_\_

Dear Sir/Madam:

I have been placed on active duty with the Armed Forces of the United States effective **(fill in date placed on active duty)** and am requesting that my monthly obligation including payments and interest on my account be reduced pursuant to my rights under the Servicemembers Civil Relief Act, 50 U.S.C. §§3901-4043 (formerly, 50 U.S.C. App. §§501-597b). My entry into military service has materially affected my ability to meet this obligation which I incurred prior to my entry of active duty at the original interest rate or as it exists currently.

The SCRA (50 U.S.C. §3937) sets a 6% per annum ceiling on interest charges (including service charges, renewal charges, and fees) during the period of a service member's military service for obligations made before entry onto active duty when the active duty materially affects the ability to pay. Thus, the balance of my obligation may not have interest charged at a rate greater than 6% per annum and any interest above 6% must be forgiven and not accrued. Note that compliance with this law is mandatory upon the creditor once the soldier makes a request. Failure to comply with such a request can subject the creditor to damages.

Please ensure that your records are amended and or corrected to reflect that my obligation has been reduced to no more than the statutory ceiling rate of 6% and that any excess charge is withdrawn. It is my understanding that certain business entities have reduced their original interest rate to less than 6% as a good faith gesture in support of our country's military personnel and the important mission they serve. Please be further advised that you may not repossess for non-payment of an installment obligation without first complying with the provisions of the SCRA (including §3952).

Thank you in advance for your attention and prompt action to this matter. Should there be any questions, please feel free to contact me at the above address.

Sincerely,

\_\_\_\_\_  
**(Name of service member)**

Encl:

Deployment Orders

## 2. Federal SCRA: Sample Termination of Automobile Lease Letter

(Name and Address of Service member)

(Date)

(Name and Address of Institution)

Re: Turning Over Vehicle VIN **(Fill in VIN of vehicle)** Pursuant to the SCRA

Dear Sir/Madam:

I have been placed on active duty with the Armed Forces of the United States effective **(fill in date placed on active duty)**. I am the lessee of **(fill in year, make, model, and VIN of leased vehicle)** and I am invoking my rights under the Servicemembers Civil Relief Act, 50 U.S.C. §3901, et seq. My deployment has materially affected both my ability to pay for and my need for the vehicle.

Section 3955(b)(2) of the SCRA allows a service member to terminate an automobile lease if the service member receives deployment orders for greater than 180 days. In this case, I will be deployed to **(place deployed to)** for at least **(number of days of ordered deployment)**. I have attached a copy of my orders for your file.

In accordance with 50 U.S.C. §3955(c), I have mailed this notice via certified mail, return receipt requested and I have already left the vehicle with **(lessor and contact person with the lessor)**. The representative with whom I have been working with at **(name of lessor)** is **(name of contact person)**, and **(he/she)** may be reached at **(phone number for contact person with the lessor)**. Therefore, in accordance with 50 U.S.C. §3955(d)(2), the effective date of termination is the postmark date of this letter.

Thank you in advance for your cooperation in this matter, and please feel free to contact me at **(your phone number or the number of someone holding a power of attorney to handle this matter)**.

Sincerely,

---

Encls:

Deployment Orders

Lease Contract

### 3. Federal SCRA: Sample Termination of Rental Property Letter

Date: \_\_\_\_\_

|                                  |                                    |
|----------------------------------|------------------------------------|
| <b>Tenant's Name and Address</b> | <b>Landlord's Name and Address</b> |
|----------------------------------|------------------------------------|

**RE: Notice of Termination of Real Property Lease  
Servicemembers Civil Relief Act, 50 U.S.C. §§3901-4043**

Dear Sir/Madam:

I am writing to terminate my lease of the following premises, pursuant to the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. §§3955 (at street address, city and state, as follows):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Under the provisions of the SCRA, I may terminate my lease since:

- I received orders to report for active military service after signing the lease.
- I received orders for a permanent change of station after signing the lease.
- I received orders to deploy with my military unit for a period of not less than 90 days after signing the lease.

My lease terminates as follows under the SCRA, and any prepaid rent covering periods after the effective termination date must be returned to me within 30 days of the effective date of the lease termination.

- Since my lease requires that I make monthly rental payments, the effective date of termination is 30 days after the first date on which the next rental payment is due and payable after the date on which the notice is delivered.
- Since my lease does not require that I make monthly rental payments, the effective date of termination is the last day of the month following the month in which the notice is delivered.

Please send any security deposit, prepaid rent covering the periods after the lease termination date, and all correspondence to me at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I regret any inconvenience this may cause, and I thank you for your understanding and cooperation in this matter.

Sincerely,

\_\_\_\_\_  
Signature

Enclosure: Military Orders

#### 4. Federal SCRA: Sample Stay of Proceedings Letter from an Attorney

(Name and Address of Service member)

(Date)

(Name and Address of Opposing Counsel/Judge)

Re: Requesting a Stay of Proceedings: **(Name of Action/Caption)**

Dear Sir/Madam:

I am **(description of who you are and firm/agency you are with)**. I am writing on behalf of **(name of service member)**, who contacted me because he is the (proposed) Defendant in the case of **(case caption)** in which you have been hired to represent **(opposing counsel's client)**.

Please note that I am not the attorney of record for purposes of representing **(name of service member)** in this civil matter. It is a function of my office to assist and advise service members concerning the necessary steps to initially protect their interests.

**(Name of service member)** is presently on active duty and is assigned to **(unit information and location)**. As such, he is afforded certain rights under the Servicemember's Civil Relief Act (SCRA), as amended, 50 U.S.C. §§3901-4043. Section 3932 of the SCRA states that a court shall, upon application by the service member, grant a stay in a civil action for a period of not less than 90 days.

**(Name of service member)** hereby applies for protection from further proceedings in the civil action pending filing against him for a period of twelve (12) months. Please find attached a letter from **(name of service member)** commanding officer indicating that his military service materially affects his ability to conduct a defense. Based on **(name of service member)** current military deployment, he will not be able to attend any proceedings subsequently scheduled in this case.

In accordance with 50 U.S.C. § 3932(c), an application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense, including a defense relating to lack of personal jurisdiction. This letter is not to be construed as either a submission to jurisdiction without lawful service or an appearance by or on behalf of **(name of service member)**. Additionally, this letter is not to serve as any form of answer to any petition, motion or complaint filed by **(name of service member)**.

I reiterate that my involvement in this case extends only to the preliminary counsel and assistance afforded to service members by legal assistance attorneys. I (am not/will not be) the attorney of record for **(name of service member)** in this civil matter.

Because **(name of service member)** military service prevents his appearance, I request that you advise the court of his status and request a stay until after **(date of estimated return)**. Finally, **(name of service member)** requests that you notify him of any action concerning the civil case, particularly in regard to the status of any resulting stay of proceedings. In this regard, this information may be provided to him at the following address:

**(Service member's name and unit address (or address of family receiving mail))**

Thank you in advance for your help in affording **(name of service member)** an opportunity to participate in the legal process while meeting his obligations to the defense of our nation.

Sincerely,

---

Name and signature block of attorney

Encl: Memorandum from Commander

CC: **(Service member)**

## 5. Federal SCRA: Sample Stay of Proceeding Letter from Commander

(Name and Address of Commander and Unit)

(Date)

(Name and Address of Opposing Counsel/Judge)

Re: Requesting a Stay of Proceedings: **(Name of Action/Caption)**

Dear Sir/Madam:

I am an officer in the United States Army writing on behalf of **(name of service member)**, who is the proposed defendant in the case of **(case caption)**. **(Name of service member)** is currently deployed in support **(OIF/OEF and where stationed)**. He is assigned to my command.

**(Name of service member)** will be unable to attend any hearings, present any type of defense, or effectively protect his interests in the matter in question until **(estimated date of return)** because of his military duties. Until this date, **(name of service member)** is mission essential to our unit as a **(duty title/position)**. My legal officer advises me that federal law allows a stay of proceedings for service members on active duty when their ability to defend themselves is materially affected by their military service (50 U.S.C. §§3931). In this instance, **(name of service member)** critical role in the national security mission of this command precludes his participation in court proceedings until not earlier than **(estimated date of return)**. He will be unable to present any defense at all due to his deployed status.

**(Name of service member)** hereby applies for protection from further proceedings in the civil action pending filing against him for a period of **(length of time gone)** to properly attend to both his obligation to his unit and this legal proceeding. I will ensure that he is available upon return from deployment to appear at the next scheduled court date after **(estimated date of return)**.

I should note that I am not an attorney and am not making this request based on any attorney-client relationship between myself and **(name of service member)**. I am not representing **(name of service member)** with regard to the proceedings pending. This letter should not be considered an appearance by **(name of service member)**. Rather, it is a request in my capacity as a commander charged with a mission supporting the national security of this nation, that you delay the proceedings to allow this soldier to perform his critical part in that mission.

Thank you in advance for your assistance in this matter. I request that you inform me or **(name of service member)**, at the above address, of any action taken regarding this request.

Sincerely,

Commander's Signature Block

Deployment Orders

CC: **(Name of service member)**

## 6. Federal SCRA: Orders Summary Form

### Military Orders Detail

This form can be used as a substitution for official orders and will be used for determining eligibility for benefits under the Servicemembers Civil Relief Act (SCRA).

| <b>SECTION 1: Servicemember Detail</b><br><i>(Including certain commissioned officers of the Public Health Services and the National Oceanic and Atmospheric Administration)</i>  |  |   |                               |   |
|---|--|---|-------------------------------|---|
| A. Name (Last, First, MI):  |  | B. Date of Birth:   | C. SSN:                       |   |
| D. Currently Active Duty:<br><input type="checkbox"/> Yes <input type="checkbox"/> No   |  | E. Branch of Service:<br><input type="checkbox"/> Army <input type="checkbox"/> Navy <input type="checkbox"/> Marine Corps <input type="checkbox"/> Air Force <input type="checkbox"/> Coast Guard <input type="checkbox"/> Other _____ |                               |   |
| F. Rank:  | G. National Guard:<br><input type="checkbox"/> Yes <input type="checkbox"/> No |   | H. If Yes, with which State:  | I. Reservist:<br><input type="checkbox"/> Yes <input type="checkbox"/> No |
| J. Marital Status:<br><input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Other: _____  |  |   |                               |   |
| K. Spouse Name (if applicable):   |  |   |                               |   |
| <b>SECTION 2: Servicemember Contact Information</b><br><i>Enter all applicable addresses / phone numbers.</i>   |  |   |                               |   |
| A. Unit Address   |  | Street  | City                          | State   |
|   |  |   |                               | Zip Code  |
| B. Address of Mortgaged Property  |  | Street  | City                          | State   |
|   |  |   |                               | Zip Code  |
| C. Mailing Address  |  | Street  | City                          | State   |
|   |  |   |                               | Zip Code  |
| D. Spouse Address   |  | Street  | City                          | State   |
|   |  |   |                               | Zip Code  |
| E. Home Phone Number<br>( ) -   |  |   | F. Cell Phone Number<br>( ) - |   |
| <b>SECTION 3: Active Duty Details</b>   |  |   |                               |   |
| A. Orders Receipt Date:   |  | B. Date of Orders:  |                               |   |
| C. Orders Active Duty Date:<br><b>From:</b> _____ <b>To:</b> _____  |  |   |                               |   |
| D. Extension Date:  |  | E. Last Date of Active Duty:  |                               |   |
| F. Orders Type:<br><input type="checkbox"/> Standard Order <input type="checkbox"/> Order to Active Duty <input type="checkbox"/> Order for Induction <input type="checkbox"/> Extension <input type="checkbox"/> Other _____ |  |   |                               |   |
| <b>SECTION 4: SIGNATURES</b>  |  |   |                               |   |
| _____<br>Commanding Officer   |  | _____<br>Servicemember  |                               | _____<br>Date   |
| Date  |  | Date  |                               |   |



## 7. Illinois SCRA: Sample Property Lease Termination Letter

Date: \_\_\_\_\_

| Tenant's Name and Address | Landlord's Name and Address |
|---------------------------|-----------------------------|
|                           |                             |

**RE: Notice of Termination of Real Property Lease  
Illinois Service Members Civil Relief Act, 330 ILCS 63/1, et seq.**

Dear Sir/Madam:

I am writing to terminate my lease of the following premises, pursuant to the Illinois Landlord and Tenant Act at 765 ILCS 705/16, as amended by the Illinois Service Members Civil Relief Act (SCRA), 330 ILCS 63/945 (Public Act 97-0913, §945) (at street address, city and state, as follows):

\_\_\_\_\_  
\_\_\_\_\_

Under the provisions of the SCRA and the Landlord and Tenant Act, I may terminate my lease since:  
\_\_\_ I have entered military service for a period of greater than twenty-nine (29) days after signing the lease.  
\_\_\_ I received orders for a permanent change of station before or after signing the lease.  
\_\_\_ I received orders to deploy with a military unit or as an individual in support of a military operation for a period of not less than 90 days before or after the signing of the lease.

My lease terminates as follows under these laws, and any prepaid rent covering periods after the effective termination date must be returned to me within 30 days of the effective date of termination:  
\_\_\_ Since my lease requires that I make monthly rental payments, the effective date of termination is 30 days after the first date on which the next rental payment is due and payable after the date on which the notice is delivered.  
\_\_\_ Since my lease does not require that I make monthly rental payments, termination of the lease is effective 30 days after the delivery of the notice to the landlord.

Please send any security deposit, prepaid rent covering the periods after the lease termination date, and all correspondence to me at:

\_\_\_\_\_  
\_\_\_\_\_

I regret any inconvenience this may cause, and I thank you for your understanding and cooperation in this matter.

Sincerely,

Enclosure: Military Orders

\_\_\_\_\_  
Signature

## 8. Illinois SCRA: Sample Illinois 6% Interest Rate Cap Letter

(Name and Address of Service member)

(Date)

(Name and Address of Institution)

Re: Interest Rate Reduction for Acct # \_\_\_\_\_

Dear Sir/Madam:

I have been placed on active duty with the Armed Forces of the United States effective **(fill in date placed on active duty)** and am requesting that my monthly obligation including payments and interest on my account be reduced pursuant to my rights under the Interest Act, 815 ILCS 205/4.05. I incurred this debt prior to my entry on active duty, at the original interest rate or as it exists currently.

The Interest Act sets a 6% per annum ceiling on interest charges (including service charges, renewal charges, and fees) during the period of a service member's military service for obligations made before entry onto active duty. Thus, the balance of my obligation may not have interest charged at a rate greater than 6% per annum and any interest above 6% must be forgiven and not accrued. Note that compliance with this law is mandatory upon the creditor once the soldier makes a request. Failure to comply with such a request can subject the creditor to civil penalty.

Please ensure that your records are amended and or corrected to reflect that my obligation has been reduced to no more than the statutory ceiling rate of 6% and that any excess charge is withdrawn. It is my understanding that certain business entities have reduced their original interest rate to less than 6% as a good faith gesture in support of our country's military personnel and the important mission they serve.

Thank you in advance for your attention and prompt action to this matter. Should there be any questions, please feel free to contact me at the above address.

Sincerely,

\_\_\_\_\_  
(Name of service member)

Encl:

Deployment Orders

## 9. Illinois SCRA: Sample Automobile Lease Termination Letter

(Name and Address of Service member)

(Date)

(Name and Address of Institution)

Re: Turning Over Vehicle VIN **(fill in VIN of vehicle)** Pursuant to the Illinois Patriot Act and the Motor Vehicle Leasing Act

Dear Sir/Madam:

I have been placed on active duty with the Armed Forces of the United States effective **(fill in date placed on active duty)**. I am the lessee of **(fill in year, make, model, and VIN of leased vehicle)** and am I am invoking my rights under the Motor Vehicle Leasing Act, 815 ILCS 636/37.

The Motor Vehicle Leasing Act allows a service member to terminate an automobile lease if the service member receives deployment orders for greater than 180 days. In this case, I will be deployed to **(place deployed to)** for at least **(number of days of ordered deployment)**. I have attached a copy of my orders for your file.

In accordance with 815 ILCS 636/37(c) I have mailed this notice via certified mail, return receipt requested and I have already left the vehicle with **(name of lessor and contact person with the lessor)**. The representative with whom I have been working with at **(name of lessor)** is **(name of contact person)**, and **(he/she)** may be reached at **(phone number for contact person with lessor)**. (Effective date of termination is the date that both requirements of 815 ILCS 636/37(c) are satisfied.)

Thank you in advance for your cooperation in this matter, and please feel free to contact me at **(your phone number or the number of someone holding a power of attorney to handle this matter)**.

Sincerely,

---

Encls:

Deployment Orders

Lease Contract

## 10. Illinois SCRA: Sample Cellular Phone Contract Termination Letter

(Name and Address of Service member)

(Date)

(Name and Address of Institution)

Re: Termination of Cellular Phone Contract, Phone # \_\_\_\_\_

Dear Sir/Madam:

I have been placed on active duty with the Armed Forces of the United States effective **(fill in date placed on active duty)**. I currently have a cellular phone contract with you, **Phone # \_\_\_\_\_**, and I am invoking my rights under the Military Personnel Cellular Phone Contract Termination Act, 815 ILCS 633/10.

The Illinois Patriot Plan allows a service member to terminate a cellular phone contract without penalty. I will be deployed to **(place deployed to)** for at least **(number of days of ordered deployment)**. I have attached a copy of my orders for your file.

In accordance with the Illinois Patriot Plan I have mailed this notice via certified mail, return receipt requested. Effective date of termination of this cellular phone contract will be thirty (30) days after the date of this notice, **(actual termination date)**.

Thank you in advance for your cooperation in this matter, and please feel free to contact me at **(your phone number or the number of someone holding a power of attorney to handle this matter)**.

Sincerely,

\_\_\_\_\_

Encls:

Deployment Orders

Cellular Phone Contract

## 11. Illinois SCRA: Public Utilities

Under the Public Utilities Act, no company or electric cooperative may stop gas or electricity from entering the residential premises of which a service member was a primary occupant immediately before the service member was deployed on active duty for nonpayment for gas or electricity supplied to the residential premises. 220 ILCS 5/8-201.5(b). Similarly, under the Municipal Code, where utility service is supplied by a municipality, no municipality may stop gas or electricity from entering the residential premises of which a service member was a primary occupant immediately before the service member was deployed on active duty for nonpayment for gas or electricity supplied to the residential premises. 65 ILCS 5/11-117-12.2.

If a service member is not the customer of record for the premises and the service member's copy of orders calling him or her into military service does not contain a primary residence of the service member that matches the address, then a utility may require documentation to prove the primary residence of the service member immediately prior to the service member's order into military service. If the utility requires documentation, it may require no more than two proofs of address. This documentation may include, but is not limited to, the following: leases, government-issued identification, student identification, bank statements, mortgage statements, credit card statements, student loan statements, credit reports, pay stub or electronic deposit receipts, affidavit certifying residency, vehicle registration, phone book listing, other utility bill statements, voter registration, report cards, or official mail from a school or any unit of government.

Some public utilities have provided notification forms:

### **North Shore Gas**

<http://www.northshoregasdelivery.com/home/pdf/patriot.pdf>

### **Peoples Gas**

<http://www.peoplesgasdelivery.com/home/pdf/patriot.pdf>

### **Ameren**

<http://www.ameren.com/> (no form provided)

## **Appendix E: Abbreviations**

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|                         |   |
|-------------------------|---|
| <b>CFPB</b>             | <b>Consumer Financial Protection Bureau</b>                                       |
| <b>C.F.R.</b>           | <b>Code of Federal Regulations</b>  |
| <b>CILA</b>             | <b>Consumer Installment Loan Act</b>  |
| <b>CMS</b>              | <b>Illinois Department of Central Management Services</b>                         |
| <b>DOD</b>              | <b>U.S. Department of Defense</b>   |
| <b>DOJ</b>              | <b>U.S. Department of Justice</b>   |
| <b>DOL</b>              | <b>U.S. Department of Labor</b>   |
| <b>ESGR</b>             | <b>Employment Support of the Guard and Reserve</b>                                |
| <b>ILCS</b>             | <b>Illinois Compiled Statutes</b>   |
| <b>Ill. Admin. Code</b> | <b>Illinois Administrative Code</b>   |
| <b>ISERRA</b>           | <b>Illinois Service Member Employment and Reemployment Rights Act (state law)</b> |
| <b>PLRA</b>             | <b>Payday Loan Reform Act of 2005</b>   |
| <b>PCS</b>              | <b>Permanent Change of Station</b>  |
| <b>RAC</b>              | <b>Refund Anticipation Check</b>  |
| <b>RAL</b>              | <b>Refund Anticipation Loan</b>   |
| <b>REFRAD</b>           | <b>Release from Active Duty</b>   |
| <b>SCRA</b>             | <b>Servicemembers Civil Relief Act (federal law)</b>                              |
| <b>SDVOSB</b>           | <b>Service-Disabled Veteran-Owned Small Business</b>                              |
| <b>SMCRA</b>            | <b>Service Member Civil Relief Act (Illinois law)</b>                             |
| <b>UCX</b>              | <b>Unemployment Compensation for Ex-Service Members Program</b>                   |
| <b>U.S.C.</b>           | <b>United States Code</b>   |
| <b>USERRA</b>           | <b>Uniformed Services Employment and Reemployment Rights Act</b>                  |
| <b>VOSB</b>             | <b>Veteran-Owned Small Business(es)</b>   |

## **Appendix F: Forms: U.S. Department of Labor (VETS) USERRA Violation Complaint**

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**ELIGIBILITY DATA FORM:** For claims under the Uniformed Services Employment and Reemployment Rights Act (USERRA)  
and/or claims under the Veterans' Preference (VP) provisions of the Veterans Employment Opportunities Act of 1998  
U.S. Department of Labor, Veterans' Employment and Training Service

Mail (or FAX) to:

Veterans' Employment and Training Service  
U.S. Department of Labor  
ATTENTION: Form 1010  
200 Constitution Ave NW  
Room S-1325  
Washington, DC 20210

Phone: (866) 4-USA-DOL ((866) 487-2365)  
FAX: (404) 562-2313  
Email: vets1010@dol.gov

PLEASE TYPE OR PRINT

**Section I: Claimant Information**

1. Name: \_\_\_\_\_  
Last Name First name MI

2. Address: \_\_\_\_\_  
Street City State ZIP

3. Social Security No: \_\_\_\_\_ 4. Home Phone: \_\_\_\_\_ 5. Cell Phone: \_\_\_\_\_

6. Email Address: \_\_\_\_\_ 7. Do you have a military service-connected disability?  Yes  No

**Section II: Uniformed Service Information**

8. Serve(d) In:  Air National Guard  Army National Guard  Army Reserve  Air Force Reserve  Naval Reserve  
 Marine Corps Reserve  Coast Guard Reserve  Army  Air Force  Navy  Marine Corps  Coast Guard  
 Public Health Service  Other (Explain in "Comments")  None (Retaliation Claim – Explain in "Comments")

9. If Reserve/National Guard:  
(A) Name of Unit: \_\_\_\_\_  
(B) Unit Address: \_\_\_\_\_  
(C) Unit Phone: \_\_\_\_\_

10. Dates of Service (If Applicable): (a) From: \_\_\_\_\_ To: \_\_\_\_\_  
**OR** (b) Date of Examination/Rejection for Service: \_\_\_\_\_

11. Type of Discharge or Separation:  Honorable Conditions  Entry Level  Uncharacterized  Medical  Other than Honorable  
 Other (Explain in "comments")  Not Applicable

**Section III: Employer Information**

12. Employer or Prospective Employer's Name: \_\_\_\_\_

13. Address: \_\_\_\_\_  
Street City State ZIP

14. Principal Employer Contact (PEC)  
(a) PEC Name Title: \_\_\_\_\_ (b) PEC Phone: \_\_\_\_\_

15. Employment Dates (If applicable): From: \_\_\_\_\_ To: \_\_\_\_\_

16. Since beginning work with this employer, has your cumulative uniformed service exceeded 5 years?  Yes  No  
If YES, explain in Comments box at the end of this claim form.

17. Name of Union(s) That Represent You: \_\_\_\_\_

18. Title of the Position or Occupation that is related to your claim (the job that you either now hold, or used to hold, or applied for, with this employer): \_\_\_\_\_



**Section IV: Claim Information**

19. Was the Employer Support of the Guard and Reserve (ESGR) involved in handling your claim initially?  Yes  No

Use items #20 and #21 to identify the program(s). (NOTE: Most claims – but not all – apply to only one program)

- For this claim to apply only to Veterans’ Preference (VP in Federal Employment: .. Complete item # 20, and skip #21.
- For this claim to apply only to USERRA: ..... Skip item #20, and complete #21.
- For this claim to apply to both VP and USERRA:..... Complete both items #20 and #21.

20. Veterans’ Preference Issue (Check One):  Hiring  Reduction-in-Force (RIF)

21. USERRA Issue(s):  Military Obligations Discrimination  Reinstatement  Initial Hiring Discrimination

Discrimination as Retaliation for any Action  Status  Pay Rate  Seniority  Other Non-Seniority Benefits

Pension  Layoff  Promotion  Vacation  Health Benefits  Special Protected Period Discharge

Reasonable Accommodations/Retraining for Disabled  Reasonable Accommodation/Retraining for Non-Qualified/Non-Disabled  Other

**If Claim Concerns Hiring, Promotion, RIF or Termination**

22. Title of Position Held or Applied For: \_\_\_\_\_

23. Pay Rate: \_\_\_\_\_

24. Date of Application Employment/Promotion: \_\_\_\_\_

(a) Vacancy Announcement Number: \_\_\_\_\_

(b) Date Vacancy Opened: \_\_\_\_\_ (c) Date Vacancy Closed: \_\_\_\_\_

**If Claim Concerns Reemployment Following Service**

25. Was Prior Notice of Service Provided to Employer?  Yes  No (If “No,” Explain in Comments)

26. (a) Who Provided Notice of Service to Employer?  Self  Other (name): \_\_\_\_\_

(b) Was the Notice of Service:  Written  Oral  Both

(c) Date Notice of Service was given to employer: \_\_\_\_\_

27. Name/Title of Person to Whom Notice of Service was Provided: \_\_\_\_\_

28. Date Applied for Reemployment: \_\_\_\_\_ OR Date Returned to Work: \_\_\_\_\_

29. Reemployment Application Made To: Name: \_\_\_\_\_ Title: \_\_\_\_\_

30. Reemployed or Reinstated?  Yes (date): \_\_\_\_\_  No

(a) If YES, what position? \_\_\_\_\_ at what pay rate? \_\_\_\_\_

(b) If NO, Date denied: \_\_\_\_\_ Reason(s) given: \_\_\_\_\_

(c) Who denied (Name and Title): \_\_\_\_\_

**PUNISHMENT FOR UNLAWFUL STATEMENTS**

The information provided in this complaint will be utilized by the U.S. Department of Labor, Veterans’ Employment and Training Service (VETS) to initiate an investigation of alleged violations of the Uniformed Services Employment and Reemployment Rights Act (USERRA) Title 38, U.S.C., Sections 4301-4335; and/or the Veterans’ Preference (VP), provisions of the Veterans Employment Opportunities Act of 1998 (VEOA), 5 U.S.C. §3330a-3330c. Potential claimants should keep in mind that it is unlawful to “knowingly and willfully” make any “materially false, fictitious, or fraudulent statements or representation” to a federal agency. Violations can be punished under Section 2 of the False Statements Accountability Act of 1996 by a fine and/or imprisonment of not more than 5 years. 18 U.S.C. § 1001.

I certify that the above information is true and correct to the best of my knowledge and belief. I authorize the U.S. Department of Labor to contact my employer or any other person for information concerning this claim. I further authorize my employer or any other person to release such information to the U.S. Department of Labor. Pursuant to 5 U.S.C., Section 552a(b) of the Privacy Act, I authorize the U.S. Department of Labor and the U.S. Department of Defense to release information and records necessary for the investigation and prosecution of my claim.

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Veterans’ Employment and Training Service, Room-S1316, 200 Constitution Avenue, N.W., Washington, DC 20210.

**NOTIFICATION OF USERRA CLAIMANT’S RIGHTS**

For claims arising under USERRA, a person has a right to commence an action for relief directly against the employer in the appropriate federal district court (in the case of a complaint against a State or private employer), pursuant to 38 U.S.C. § 4323(a)(3), or the Merit Systems Protection Board (in the case of a complaint against a Federal executive agency or the Office of Personnel Management), pursuant to 38 U.S.C. § 4324(b)

**PRIVACY ACT STATEMENT**

The primary use of this information is by staff of the Veterans’ Employment and Training Service in investigating cases under USERRA or laws/regulations relating to veterans’ preference in Federal employment. Disclosure of this information may be made to: a Federal, state or local agency for appropriate reasons; in connection with litigation; and to an individual or contractor performing a Federal function. Furnishing the information on this form, including your Social Security Number, is voluntary. However, failure to provide this information may jeopardize the Department of Labor’s ability to provide assistance on your claim.

Continue in Comments box &/or use additional sheet(s) to explain items if needed – Sign and date form (above)

## Explain your claim in detail – List all remedies you seek

Use additional sheet(s) if needed – Initial & date each page at bottom

Comments

INITIALS: \_\_\_\_\_ DATE: \_\_\_\_\_

MAIL (or FAX) to:

Veterans' Employment and Training Service  
U.S. Department of Labor  
ATTENTION: Form 1010  
200 Constitution Ave NW  
Room S-1325  
Washington, DC 20210

Phone: (866) 4-USA-DOL ((866) 487-2365))  
FAX: (404) 562-2313  
Email: [vets1010@dol.gov](mailto:vets1010@dol.gov)

**Instructions for filing claims under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and/or the Veterans' Preference (VP) provisions of the Veterans Employment Opportunities Act of 1998**

**Section I**

- Questions 1-7 - Self-explanatory. (Note: Social Security number is optional, but desired; or, you may instead just give "000-00-" and then the last four digits of your Social Security number.)

**Section II**

For this section please use the branch of service that you were, are or will be in when the allegations that lead you to file this claim occurred. For each question, answer to the best of your ability only the questions that apply to you. This information must eventually be supported with documentation in order for the Veterans' Employment and Training Service (VETS) to establish your eligibility under the law.

- Question 8 - Mark the appropriate box to indicate the branch of service you that you are, have been, or will be a member of. (May skip if filing a VP claim).
- Question 9 - Fill in the specific information you have of your unit including name, address and phone number.
- Question 10 -
  - a. Fill in the dates that you served in, the date that you began your service, the date that you will begin your service. OR
  - b. Fill in the date of examination/rejection for service.
- Question 11 - Mark the appropriate box that best describes how you were discharged or separated. (If you have not yet been discharged, mark "Not Applicable.")

**Section III**

Please report the information of the employer(s) that your claim involves as accurately as possible. This information will be used to establish a point of contact within the company or agency.

- Question 12 - Fill in the name of your employer or the employer that you applied for a position with.
- Question 13 - Fill in the employer's or potential employer's mailing address.
- Question 14 -
  - a. Fill in the name and, if possible the title of the person you are or have been in contact with regarding the position employed or applied for. (Often a human resource specialist or supervisor.)
  - b. Fill in their phone number.
- Question 15 - Fill in the dates that you have been employed with this employer; or, if still employed there, fill in just the "From" date that you started working for this employer; or, if you have not yet started working there, fill in just the "From" date that you will start working for this employer.
- Question 16 - (USERRA only) Mark the "no" box if you have not exceeded five cumulative years of uniformed service since beginning work with this employer. Mark the "yes" box if you have exceeded five cumulative years of uniformed service since beginning work with this employer and explain in the "Comments" section below.
- Question 17 - Fill in the name of any Union(s) that may represent you. (May leave this question blank if filing a VP claim)
- Question 18 - Fill in the title of the position you have now, or that you previously had, or that you applied for, with this employer.

**Section IV**

- Question 19 - (USERRA only) Indicate if the Employer Support of the Guard and Reserve (ESGR) was involved in handling your complaint before filing this Form 1010 claim with VETS.

Use Question #20 and/or #21 in this section to identify the program(s) for which you are filing this claim. (NOTE: Most claims - but not all - apply to only one program.) To complete Question #20 and/or #21, please fill in the issue that best describes your claim.

- For this claim to apply only to Veterans' Preference (VP) in Federal Employment: Complete Question #20, and skip #21.
- For this claim to apply only to USERRA: Skip #20 and complete #21.
- For this claim to apply to both VP and USERRA: Complete both #20 and #21.

**If Claim Concerns Hiring, RIF, Promotion or Termination**

- Question 22 - Fill in the title of the position that relates to this claim.
- Question 23 - (USERRA only) Fill in the rate of pay for the position that relates to this claim.
- Question 24 - (USERRA only) Fill in the date you applied for the position or promotion that relates to this claim.
  - a. Fill in the Vacancy Announcement Number.
  - b. Fill in the date the vacancy opened.
  - c. Fill in the date the vacancy closed.

**If Claim Concerns Reemployment Following Service**

- Question 25 - (USERRA only) Fill in yes if you provided notice of your service to your employer before you began your military service. If not, mark "no" and explain in the "Comments" section and continue to question 28.
- Question 26 - (USERRA only)
  - a. Mark the "self" box if you provided the notice or the name of the person that provided the notice to your employer on your behalf.
  - b. Indicate how the notice was given and mark the appropriate box or boxes.
  - c. Fill in the date that the notice of service was provided to the employer.
- Question 27 - (USERRA only) Fill in the name and title of the person to whom you provided the notice of service.
- Question 28 - (USERRA only) Fill in the date you applied for reemployment or the date you returned to work.
- Question 29 - Fill in the name and title of the person to whom you applied for reemployment.
- Question 30 - If you have been reemployed or reinstated, mark the "yes" box and enter the date that you were reemployed or have been reinstated with your employer and complete 30 (a). If you have not been reemployed or reinstated, mark the "no" box, skip 30 (a) and complete 30 (b) and (c).
  - a. Fill in your position and pay rate.
  - b. Fill in the date that your reemployment was denied and state the reason that was given. (If additional space is needed, you may explain in "Comments" section).
  - c. Fill in the name and title of the individual within your employer who denied your reemployment.

**Comments**

Please explain in detail and be sure to include any relevant facts as to why you are filing this claim. Please be sure to also explain in detail what remedies (for example: employment, reemployment rights, lost wages, seniority benefits, etc.) you seek by filing this claim.

