

# Understanding Your Legal Rights on Active Duty

As a member of the military, you are called on to sacrifice constantly for the good of your country. As a "thank you" for that sacrifice, the United States government has enacted several laws designed to protect your rights. When you are called to active duty, you will find that several additional benefits are enforced that can make your time on duty a little easier, both for you and for your family left behind. Here's what you need to know about your rights when you head overseas in service to our country.

## Servicemembers Civil Relief Act

The rights of active-duty members of the military are protected by several laws, but most are found in the Servicemembers Civil Relief Act (SCRA). This act is an expansion and improvement of the Soldiers' and Sailors' Civil Relief Act, and it provides protection for those serving on active duty. Specifically, the SCRA postpones or suspends certain civil obligations while a sailor or soldier is serving in the military full time. This helps relieve some of the stress the family who is left behind faces while their service member is deployed.

Several obligations are protected under the law, but specifically, it suspends:

- Tax payments
- Mortgage payments
- Credit card debts
- Termination of lease
- Pending trials

The expanded law has a few additional protections. These include:

- Protecting families of those deployed as well as the servicemembers themselves from being evicted from their housing due to nonpayment of rent provided the rent is below the monthly allotment, which updates every year. In 2015 this limit was \$3,329.84 a month.
- Limits interest on credit obligations that were incurred prior to activation or service to 6 percent, including credit card debt. Debts acquired after the service member leaves for military service are not subject to this protection.
- Requires all monthly payments on credit obligations to be reduced to properly reflect the lower interest rate.
- Allows service members to terminate their cell phone contracts if their new location is not a covered location, provided they will be in the location for at least 90 days.
- Allows for the termination of a vehicle lease if the lease was signed prior to the individual joining the military. This only applies to those who will be deployed for 180

days or more. It also applies to those who receive PCS orders to an OCONUS location for a term of 180 days or more.

The rights of the SCRA only apply to active duty servicemembers, and only while they are actually on active duty. The protection starts the day they enter active duty and will terminate at some point between 30 and 90 days of discharge.

## Housing Rights

If you are employed in active duty, you don't have to worry about losing your home while you are gone. The SCRA and other protections provide protection against foreclosure and eviction. Understanding these rights will help you protect yourself and your family while you're overseas.

If you rent, the protections under the SCRA are some of the best. Unless your rental fees are over \$3,329.84 a month, you cannot face eviction while serving in active duty. That said, you may still find that you're served an eviction notice by a landlord who doesn't know about these protections or chooses to overlook them.

If you feel that you are protected because the house is your primary residence and the rent is below the rent ceiling, you have the right to request a temporary stay of the proceedings for a period of three months. The courts can take a closer look at the money you owe and adjust this amount so that you can pay it and your landlord can get a portion of what is owed, thus protecting both of your best interests.

SCRA also protects you from foreclosure. If your property is nearing foreclosure, the lender must first get approval from the court, provided you got your mortgage prior to entering military service. It's possible that the courts will allow the foreclosure to proceed, but this additional step gives you the chance to plead your case and seek to keep your home.

## Employment Rights

One of the sacrifices that members of the military make when they are called to active duty is the loss of time at their job. If you are pursuing a civilian career in addition to your military one, this balance can be tricky. The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) provides protections that allow you to retain your job and benefits and seek employment without discrimination. This law applies to all employers, regardless of the number of employees that they have, and includes federal and state government employees.

Under USERRA, you are eligible for reemployment at your employer if you meet five eligibility criteria. These are:

- You are leaving your civilian job to perform military service.
- You gave written or verbal notice to your employer about the reason you were leaving.
- You did not exceed the five-year cumulative limit on periods of service.
- You were honorably released from service.

- You reported back to your employer in a timely way or submitted your reemployment application in a timely fashion.

Under USERRA, you have four basic protections if you meet those criteria. These are the right to enjoy:

- Prompt reinstatement that occurs no longer than two weeks after you apply.
- Seniority to continue accruing as if you were continuously employed.
- Training and retraining accommodations that are necessary after an absence.
- Protection against being fired after reemployment unless there is just cause. This protection last for 180 days after terms of service of 31-180 days and one year for periods of service of 181 days or more.

In addition, you cannot be denied employment on an initial application because you are in the military, neither can an employer deny you any benefits or promotions you earned properly.

If you are called to active duty, your employer must reemploy you in the job you would have had if you hadn't left, including any promotions that would logically have been yours. However, it's possible that you will need additional training to refresh your skills, or it's possible that your job will no longer be something the company needs. In these cases, the employer will provide a reasonable and similar alternative or the training you need to be re-employable.

### Civil Rights for Service Members

As a member of the military, you deserve to be honored for your service to our country, but unfortunately many times this is not the case. Under the law, you are afforded several protections, and some of these are civil rights. The Civil Rights Division of the Department of Justice works to enforce these so that the service you put in does not put you at risk of losing your jobs, right to vote, or other civil liberties you deserve as a citizen of the United States.

The Service Members Civil Relief Act is the primary location of these rights, which have already been discussed. By putting aside consumer debt obligations and providing foreclosure and eviction protections, SCRA helps ensure service members have a financially stable home to return to after their tour of duty.

Your right to vote is also protected under the Department of Justice. Specifically, the Uniformed and Overseas Citizens Absentee Voting Act, enacted by congress in 1986, requires that you be provided the chance to vote absentee whenever you wish. In 2010 the Military and Overseas Voter Empowerment Act, which was an amendment to UOCAVA, allows active-duty military members to request their absentee ballot and register to vote through electronic transmissions. It also allows for the electronic transmission of absentee ballots. The ballots must be transmitted no later than 45 days before any federal election. If there is an election coming up that you wish to vote in, these regulations ensure that you will have the right to do so.

### Rights for Spouses and Families

Many of the rights extended to active-duty members of the military extend to their families as well, as spouses will receive protections from foreclosure and creditors just as their military spouses do. One specific protection from the United States Department of Labor applies specifically to spouses and families of those in the military. That is the military portion of the Family and Medical Leave Act.

Under the Family and Medical Leave Act (FMLA), specific provisions for military families have been made that allow spouses, parents, and children of qualifying members of the military to take FMLA to leave for "qualifying exigencies" coming from the foreign deployment of their family member. The family member must be a spouse, son, daughter, or parent in order to qualify. Under this provision, employees can take up to 12 workweeks of unpaid leave, while their job is protected, per year for qualifying exigencies. These include:

- Need to make alternative childcare arrangements for the child of the deployed service member.
- Attending military ceremonies and briefings.
- Making legal or financial arrangements necessary during the military member's absence.

In addition, employees are given a total of 26 workweeks of job-protected, unpaid leave to care for a service member who is suffering a serious illness or injury. In order to apply, the servicemember must be either a current member of the armed forces who is dealing with a serious injury or illness or a veteran who was discharged within the five-year period before the first time the employee requests military caregiver leave.

If you believe that your military FMLA rights have been violated, you can make a complaint with the Wage and Hour Division. You are also able to take your employer to court in a private lawsuit.

### Getting Help from Armed Forces Legal Assistance Office

If you feel that your rights have been violated as an active-duty member of the military, the U.S. Armed Forces Legal Assistance Office is available to help you. While the primary focus of the Legal Assistance Program is to help members of the military get their legal affairs in order before they go on active duty, these offices can also help with protecting your military rights. You can get free legal services and attorney advice through your branch's local Legal Assistance office. The Armed Forces Legal Assistance Office does not provide in-court representation but can provide advice as to whether you should pursue a lawsuit for the violation of your rights that you have experienced.

Almost every base, installation, or ship has its own legal assistance office. These offices are served by military lawyers, which are known as Judge Advocates (JAGs). If you are having trouble finding your local JAG office, the following may help:

- Armed Forces Legal Assistance Directory
- Army Legal Defenses Page
- U.S. Navy Judge Advocate General's Corps

- [Coast Guard Judge Advocate](#)
- [Marines JAGs](#)
- [Air Force Legal Assistance](#)

### Where to Get Additional Help

If you have additional questions about your rights as an active-duty member of the military, start with your local JAG office. If you can't get the answers there, consider talking to a non-military attorney, or check out these resources:

- [Family Legal Assistance](#)
- [Operation We Are Here: Legal Advice or Assistance](#) - A list of resources for veterans and those in active duty who need legal help.
- [GI Rights Hotline](#) - A network of organizations providing legal counseling to military servicemembers.
- [Lawyers Serving Warriors, National Veterans Legal Services Program](#) - Pro-bono help for veterans and soldiers.
- [Operation Military Embrace](#) - Support for those who are accused of battlefield crimes.
- [Protect Our Defenders](#) - Legal assistance for servicemembers who have faced sexual violence or harassment.