

FEDERAL AND STATE LAWS AFFECTING ACTIVE DUTY SERVICE MEMBERS AND VETERANS

Guide to Understanding Relevant Federal and State Laws Affecting Members of the Military, Reservists and Veterans Living in New York

There exist a vast number of laws and regulations that either directly or indirectly affect members of the armed forces, veterans and reservists. This Guide is designed to highlight various statutes, offer citations for purposes of further research and generally offer an overview of the expanse of relevant provisions. This Guide does not exhaust all relevant laws, regulations and resources but permits a practitioner to better comprehend applicable materials and offers direction for further understanding.

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Disclaimer. This broad stroke guide is provided to describe the general provisions of law that affect military personal, reservists and veterans. Any information provided is not intended as legal advice and should not be construed as legal advice. An attorney should always be consulted to answer specific questions relevant to particular circumstances. The summaries provided here are incomplete and the laws and regulations are subject to change and court's interpretations are likely to evolve. Resources such as web sites are provided for the reader's convenience and are intended to direct reader to additional information on topic, but their accuracy cannot be assured.

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PART ONE

FEDERAL PROVISIONS OF LAW

I. Procedure

Special Procedural Rules Applicable to Persons on Active Military Duty, Reservists and Veterans

A. Federal Rules of Civil Procedure and the Servicemembers' Civil Relief Act (SCRA 50 U.S.C. §§ 501 – 596)

1. The SCRA modifies the Federal Rules of Civil Procedure in that it: (1) extends protection against the entry of default judgments; and (2) stays or allows for vacation of execution of judgments.

a. Rule 55 - Default/Default Judgment

i. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

ii. Pursuant to the Servicemembers Civil Relief Act, the plaintiff must file an affidavit stating whether the defendant is or is not in active military service. See 50 U.S.C. § 521(b)(1)

iii. The Servicemembers Civil Relief Act protects active military personnel from inappropriate default judgments. The Act requires that the court appoint an attorney to represent the service member before entering judgment, provides for an automatic stay under certain circumstances, and provides for the vacation or setting aside of default judgments against service members. See Servicemembers Civil Relief Act, 50 U.S.C. §§ 521(b)(1),(2),(d) & (g).

b. Rule 62 - Stay of Proceedings to Enforce a Judgment

i. In addition to the protections afforded by Fed. R. Civ. P. 62, the Servicemembers Civil Relief Act provides military service members with additional rights to a stay of execution of judgment. See 50 U.S.C. §§ 524 to 525.

c. Rule 32 - Using Depositions in Court Proceedings

i. In General. At a hearing or trial, all or part of a deposition may be used against a party on these conditions:

- the party was present or represented at the taking of the deposition or had reasonable notice of it;

- it is used to the extent it would be admissible under the Federal Rules of Evidence if the deponent were present and testifying; and

- the use is allowed by Rule 32(a)(through (8))

ii. Unavailable Witness. A party may use for any purpose the deposition of a witness, whether or not a party, if the court finds:

- that the witness is dead;

- that the witness is more than 100 miles from the place of hearing or trial or is outside the United States, unless it appears that the witness's absence was procured by the party offering the deposition (emphasis added);

- that the witness cannot attend or testify because of age, illness, infirmity, or imprisonment;

- that the party offering the deposition could not procure the witness's attendance by subpoena; or

- on motion and notice, that exceptional circumstances make it desirable—in the interest of justice and with due regard to the importance of live testimony in open court—to permit the deposition to be used.

- Recognizing that there may be adequate reasons for a party's absence, the courts have resisted adopting any per se rule of voluntary absence, even if the party is technically responsible for it. See, e.g., *Robinson v. Food Service of Belton, Inc.*, 415 F. Supp. 2d

1232, 1238, 11 Wage & Hour Cas. 2d (BNA) 11 (D. Kan. 2005) (permitting deposition of party where party joined military reserves after filing suit and was activated and sent to South Carolina).

d. Tolling of the Statute of Limitations for Active Service Members

i. Pursuant to the SCRA, courts shall grant a stay of proceedings for a minimum of 90 days upon application of counsel or sua sponte where the defendant is on active military service if the court determines that there may be a defense to the action and a defense cannot be presented without the defendant or, after due diligence, counsel has been unable to contact the defendant or otherwise determine whether a meritorious defense exists. 50 U.S.C. § 521.

ii. See *Conroy v. Aniskoff*, 507 U.S. 511, 513-14, 113 S. Ct. 1562, 123 L. Ed.2d 229 (1993) (permitting active U.S. Army officer to benefit from tolling provision of the Soldiers' and Sailors' Civil Relief Act of 1940 ("SSCRA") to bring a suit while officer was still on active duty); *Mason v. Texaco, Inc.*, 862 F.2d 242, 244-45 (10th Cir.1988) (concluding that otherwise untimely suit brought by then-active serviceman was saved by SSCRA).

iii. Courts may also sever parties to a case so as to avoid delay due to active service members' deployment. See, e.g., *Smith v. Zuniga*, 03-CA-881(NN), 2006 WL 1207685, *1 fn. 2 (W.D. Tx may 4, 2006) (severing plaintiff's claim against one of the defendants who was currently on active military duty and either deployed to Iraq or awaiting deployment from military base to Iraq); but see *Antioch Co. v. Scrapbook Borders, Inc.*, 210 F.R.D. 645 (D. Minn. 2002) (fact that one defendant was in active service in the air force did not warrant a stay of the proceedings pursuant to SCRA)

iv. Note: The SCRA does not exempt from civil process nonresident military officers nor does it affect the method of service prescribed by the Federal Rules of Civil Procedure. *Tully v. Superior Court*, 113 P.2d 477 (1st Dist. 1941); *McFadden v. Shore*, 60 F. Supp. 8 (E.D. Pa. 1945); Fed. R. Civ. P. 4.

B. Supreme Court Rules

1. Rule 40. Veterans, Seamen, and Military Cases

a. A veteran suing to establish reemployment rights under any provision of law exempting veterans from the payment of fees or court costs, may file a motion for leave to proceed on papers prepared as required by Rule 33.2. The motion shall ask leave to proceed as a veteran and be accompanied

by an affidavit or declaration setting out the moving party's veteran status. A copy of the motion shall precede and be attached to each copy of the petition for a writ of certiorari or other substantive document filed by the veteran.

b. A seaman suing under 28 U. S. C. § 1916 may proceed without prepayment of fees or costs or furnishing security therefore, but is not entitled to proceed under Rule 33.2, except as authorized by the Court on separate motion under Rule 39.

II. Citizenship

The Immigration and Naturalization Act creates a path to citizenship for members of the U.S. Armed Forces and certain veterans. Last year, more than 10,000 legal immigrants in the U.S. military became citizens through the government's expedited citizenship process. Generally, members of the U.S. Army, Air Force, Marine Corps, Coast Guard and certain Reserve and National Guard members qualify. Certain customary fees are waived and one may apply through qualifying service during peacetime or qualifying service during periods of hostility. While the requirements for each differ, both require that one serve honorably. Further, provisions in the Immigration and Naturalization Act, in certain cases, extend to posthumous naturalization and spouses of service members.

The United States Citizen and Immigration Service has set up a web site and hotline that provides additional information to those seeking information: www.uscis.gov; Military Help Line: 1-877-CIS-4MIL.

A. Citizenship for Military Members

1. General: Members and certain veterans of the U.S. armed forces may be eligible for naturalization through their military service pursuant to the Immigration and Nationality Act (INA) Sections 328 and 329; **8 USC 1440**
2. Peacetime Naturalization
 - a. INA §328
 - b. Age 18 and over
 - c. Served Honorably for at least 1 year (if separated from armed forces, separated honorably)
 - d. Permanent resident at time of examination
 - e. Able to read, write and speak basic English; knowledge of US history/civics
 - f. Good moral character; attachment to principles of U.S. Constitution
 - g. Residency Requirements
3. Naturalization through Qualifying Service during Periods of Hostility
 - a. INA §329
 - b. Generally, members of the U.S. Armed Forces who served honorably for any period of time during specifically designated periods of time of hostilities are eligible for naturalization
 - c. Served Honorably in Active Duty Status
 - d. Able to read, write and speak basic English; knowledge of US history/civics
 - e. Good moral character; attachment to principles of U.S. Constitution
 - f. Designated Periods
 - 4/6/17 – 11/11/18
 - 9/1/39 – 12/31/46
 - 6/25/50 – 7/1/55
 - 2/28/61 – 10/15/78
 - 8/2/90 - 4/11/91
 - 9/11/2001 - present
4. Posthumous Citizenship for Military Members
 - a. INA §329A; Generally, persons who served honorably in the U.S. Armed Forces and who died as a result of injury or disease incurred while serving in an active duty status during specified periods of military hostilities may be eligible.

B. Citizenship for Spouses and Children of Military Members

1. Expedited Naturalization for Spouses of Military Members- INA §319(b)
2. Overseas Naturalization for Spouses of Military Members - INA §319(e)
3. Overseas Naturalization for Children of Military Members - INA §322
4. Extension of Posthumous Benefits to Surviving Spouses, Children, and Parents of Certain Military Personnel - INA §329A, Note 1

C. Lawful Permanent Resident Status for Family Members of Military

1. INA Section 213A(f)(3) provides some relief to active duty service members who sponsor family members and are only required to prove earnings of 100 per cent of the federal poverty guidelines instead of the 125% required of all others.
2. INA Section 204(a)(1)(A)(ii) allows the spouse of a U.S. citizen who dies to self petition within two years of the U.S. citizen spouse's death. Children may be included in the petition. This provision can be particularly helpful to soldiers who may die as a result of hostilities and their foreign national families can continue towards gaining lawful permanent residence.

III. Family Law Considerations

A. Effects of Parents Military Service on Child Custody - See ALR 6th 577; Courts have reached varying results when looking at child custody issues when parent is in military. Some have looked at a parent's likely

deployment as a factor, others have not, and some have looked at likely deployment as a primary factor. Primarily a State Issue.

B. Garnishment

1. Federal law authorizes the pay of active, reserve and retired members of the military and the pay of civilian employees of the Federal government to be garnished for the payment of child and/or spousal support. 42 U.S.C. §659
2. To implement a garnishment or wage attachment against member of the military, income withholding order must be served on Defense Finance and Accounting Service (DFAS)

C. Uniformed Services Former Spouses' Protection Act 10 U.S.C. 1408

1. Recognizes the right of state courts to distribute military retired pay to a spouse or former spouse, upon divorce, and provides a method for enforcing these orders.
2. Must have been married for at least 10 years during which the member performed at least 10 years of creditable military service (the 10/10 rule) in order for DFAS to direct pay to former spouse.
3. Maximum that can be paid for a former spouse is 50% of disposable retired pay
4. Establishes a payments mechanism allowing an eligible former spouse to receive the share of the retired pay directly from the military pursuant to a state court order in divorce proceedings.
5. To receive direct payments, the former spouse serves upon the Secretary a state court order specifically providing for the payment of an amount of the disposable retired pay; court order must have been issued by a court of competent jurisdiction.
6. The division of spousal property upon divorce is usually a question of state law.
7. Provides a method of enforcing current child support and/or arrears and current alimony awarded in the court order.
8. SCRA: All rights pursuant to the Servicemembers Civil Relief Act must be observed.

D. Family and Medical Leave Act/ Military Family Leave Entitlements www.dol.gov

1. Generally, under the Family and Medical Leave Act, an employee is entitled to up to 12 weeks of unpaid leave in a 12 month period for the birth or adoption of a child, the serious health condition of the employee, or for the employee to care for the serious health condition of his or her spouse, son, daughter, or parent. 29 U.S.C. 2612(a)(1).
2. FMLA applies to all public agencies, including state, local and federal employers, local education agencies and private employers who employ more than 50 employees in 20 or more workweeks a year.
3. In order for an employee to be eligible for FMLA benefits, an employee must have worked for a covered employer; have worked for employer for at least 12 months; have worked a minimum of 1250 hours during the 12 month period; and worked in a location where more than 50 employees are employed within a 75 mile radius.
4. 10/09 National Defense Authorization Act (NDAA) signed expanding military leave entitlements of the Family and Medical Leave Act by expanding both the 'qualifying exigency' leave and the military caregiver leave that became effective in January 2008.
5. Eligible employees may take up to 12 workweeks of job-protected leave in a 12 month period for any qualifying exigency arising out of the active duty or the call to active duty status of a spouse, son, daughter, or parent. Qualifying exigency leave is available to a family member of a military member in the National Guard or Reserves.
6. Qualifying exigencies include: short notice deployment (deployment in less than 7 days); Military events and related activities (including funerals); Childcare issues arising from the call to duty of one parent; Organizing financial and legal arrangements; attend counseling; taking up to five days to spend with serviceperson who is on temporary leave; post-deployment activities;
7. Eligible employees may take up to 26 workweeks of job-protected leave in a 12 month period to care for a covered service member with a serious injury or illness.

E. Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) – grants exclusive and continuing jurisdiction in a child custody litigation in the child's home state. Not a substantive statute, rather determines

which states should exercise jurisdiction. Nearly every state has adopted, New York UCCJEA is found in Domestic Relations Law §76.

IV. Voting Rights

A. Uniformed and Overseas Citizens Absentee Voting Act 42 U.S.C.A. §1973

1. 10/09 President Obama signed into law the National Defense Authorization Act (NDAA) for fiscal year 2010. The 2010 NDAA contained amendments to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).
2. The UOCAVA gives “absent uniformed service voters” and “overseas voters” the right to vote in primary, general, special and runoff elections for federal office. Generally, an absent uniformed service voter is member of the armed forces, spouse or family member on active duty within or outside the United States. An overseas voter is a U.S. Citizen of voting age outside the U.S. temporarily or indefinitely.
3. As amended the UOCAVA now requires each state to “transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter – (A) except as provided in subsection (g), in the case where the request is received at least 45 days before an election for Federal office, not later than 45 days before the election” UOCAVA §102(a)(8)
4. If a state does not think it can comply with the 45 day requirement it must make a showing of undue hardship to the Presidential designee and seek a waiver. Those states that are currently scheduled to hold primaries for federal office in September of 2010 will either need to move their primary to a date earlier in the year to accommodate the need to send out ballots no less than 45 days in advance or seek a waiver and make a showing of undue hardship.
5. See: <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/18/AR2010031805318.html>: article in the Washington Post by Tim Craig (3/19/10) examining the need for several states to possibly move the primary dates currently scheduled for September 2010 in order to comply with the recent 45 day requirement, including New York.

B. State Voting Rights of Residents of Federal Military Establishment

1. 50 U.S.C. §595 ... for voting purposes, a service member neither acquires nor loses residence or domicile solely by residing in a given state pursuant to military orders
2. Unless service member takes affirmative steps to register to vote in host state, home state registration remains valid.

V. Labor and Employment

In 1940, Congress began enacting a series of laws governing employment and reemployment of those taking leaves to serve in the Armed Forces, commencing with the Selective Training and Service Act. In 1994, prior Acts and amendments culminated in the Uniformed Services Employment and Reemployment Rights Act. (USERRA) 38 U.S.C. §4301-4333. The rights, protections and responsibilities of USERRA are meant to be comprehensive and the provisions should be “liberally construed for he who has laid aside his private concerns to serve his country in it hour of great need” *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946). The Statute applies to all public and private employers regardless of size, including state and federal employers. Generally, USERRA guarantees reemployment, reinstatement in group health plan and health plan continuation coverage to employees absent from work for service in “uniformed service.” The statute applies to most employees, including part-time, temporary, probational, seasonal, managerial, executive and professional employees. USERRA seeks to “encourage non-career service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service”; “to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for prompt reemployment of such

persons upon their completion of such service”; and ‘to prohibit discrimination against persons because of their service in the uniformed services.’ 38 U.S.C. §4301.

A. USERRA Prohibits Discrimination (38 U.S.C. §4311)

1. USERRA prohibits discrimination in hiring, retention, promotion and any benefit of employment
2. Protection extends to those not in military service who testify, make a statement or assist in any investigation pursuant to USERRA action
3. Plaintiff must make showing that protected status or activity was a “motivating factor,” not necessarily sole factor. 38 U.S.C. §4311(c); Must show that service was “a reason”
4. Burden then shifts to employer to prove adverse action would have been taken in the absence of such membership, application for membership, service, application for service or obligation for service.
 - a. See *Fink v. City of New York*, 129 F.Supp.2d 511 (E.D.N.Y. 2001) After plaintiff makes prima facie showing (denied opportunity to take promotional test), employer can defeat claim by showing that action would have been taken regardless; Court found that denial was unlawful employment practice. Ultimately, Federal Court sustained a jury award of double pay plus \$300,000 for emotional distress for a NYFD promotional candidate who was denied the chance to makeup an exam missed due to military service.

B. Prerequisites for Application of USERRA (38 U.S.C. §4312)

1. Covered employee must have held a civilian job
 - a. Applies to all public and private employers regardless of size, including state and federal employers
 - b. Successors in Interest: statute applies to employers that are considered successors in interest, regardless of their knowledge of possible reemployment claim.
 - c. Applies for almost all employees, including part time, temporary, probational, seasonal, managerial, executive and professional employees. Exception for employee who worked for brief, non-recurring period with no reasonable expectation that employment would continue for a significant time.
2. Employee must have given prior notice of service to civilian employer
 - a. Notice may be oral and informal; statute does not require written notice but it is recommended so as to minimize possible disputes
 - b. If circumstances permit: notice should be given at least 30 days in advance
 - c. Notice requirement excused if impossible or unreasonable under the circumstances; In cases where deployment is classified or notice is unreasonable, this exception will be narrowly construed.
3. Five year limitation on period of service
 - a. The five year limitation is cumulative and restarts when civilian employer changes.
 - b. Certain types of service do not count toward five year calculation. 38 U.S.C. 4312(c)(4)(A)
4. Employee’s military service must be “honorable”
5. Employee must report back/ apply for reemployment within proscribed time period
 - a. For service up to 30 days: must report back at next shift following travel and 8 hours rest.
 - b. For service 30-180 days: must report or reapply within 14 days.
 - c. For service 181 days or more: service member must report or reapply within 90 days.
 - d. Reapplication should indicate that person previously worked for employer, is returning from military service and is seeking reemployment under USERRA. Reapplication need not be in writing, but advised.
 - i. See *Erickson v. United States Postal Service*, 571 F.3d 1364 (Fed. Cir. 2009) application for reemployment must be more than a mere inquiry.

C. Rights and Protections of Returning Employees (38 U.S.C. §4311-4318)

1. Prompt Reemployment: if employee gone fewer than 30 days, then reemployment is to be immediate; if longer than 30 days then reemployment should be within a matter of days following application.
2. Status: employee is entitled to same status as previous employment (ex.: title, geographic location, shift).

3. Seniority

- a. Concept of 'Escalator Principle': If the employer has any system of seniority, the employee returns to work as though they had not left. (The Supreme Court in *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275 (1946) used the term 'escalator principle' stating a veteran "does not step back on the seniority escalator at the point he stepped off. He steps back on at the precise point he would have occupied had he kept his position continuously during the war." ... "so that he does not lose ground by virtue of his absence." The Department of Labor adopted this premise. See 20 C.F.R. §1002.191 ABA Section of Labor and Employment Law, *The Uniformed Services Employment and Reemployment Rights Act*, , Editors, Wood and Miazad, 2009, citing 20 C.F.R. §1002.212; see *Foster v. Dravo Corp.*, 420 U.S. 92 (1975).
- b. If employee is absent for 90 days or less, employer must return employee to position in which employee would have been employed without interruption.
- c. If the employee was in service for 91 or more days the employee is entitled to the same 'or like' job plus seniority.
- d. The test to determine if the right or benefit qualifies as seniority based is two part:
 - i. "The right or benefit must have been intended to be a reward for length of service, not a form of short-term compensation, and
 - ii. It must be 'reasonably certain' that the employee would have attained the right or benefit had he been continuously employed." ABA Section of Labor and Employment Law, *The Uniformed Services Employment and Reemployment Rights Act*, , Editors, Wood and Miazad, 2009, citing 20 C.F.R. §1002.212; see *Foster v. Dravo Corp.*, 420 U.S. 92 (1975).
- e. The escalator may go up or down depending on the circumstances of the employer; there is no guarantee that it will only go up.

4. Pension Plans: The concept of seniority applies to pension plans as well; the employer/plan administrator must treat the employee as though they had never left. (USERRA does not match the definitions of defined benefit/contribution plans of ERISA) 20 C.F.R. §1002.262(a)

- a. Military leave is not considered a break in service
- b. Defined Benefit plans (employers contribute): employer does not have to contribute while employee on military leave, but upon reemployment, employer must make contributions as though employee were continuously employed.
- c. Defined Contribution plans: upon reemployment, employee is permitted to make up the contributions missed while on military leave; if employer matches contributions, then it must do so with the make-up contributions.

5. Protection from Discharge/ Dismissal only for "cause" 38 U.S.C. §4316

- a. Employee may only be dismissed 'for cause' following return from military service
 - i. If service 31-180 days: the employee is protected for 180 days
 - i. If service greater than 180 days then protection is for one year.

6. Training and Retraining: employee must make efforts, at no cost to employee, to provide any necessary training so as to have employee achieve position they would have held had they been continuously employed. "Reasonable Efforts" are those that do not cause 'undue hardship' to the employer.

- a. If employer cannot accommodate the employee, the employer must find a position which is the nearest approximation to previous position; looking at seniority, status and pay.

7. Health Insurance

- a. Upon reemployment, employee and dependents must be reinstated in group health plan without exclusions or waiting periods not otherwise applicable
- b. Upon request, employer must continue employee and family for first 30 days of service, cost must remain the same as normal contribution. (Note: TRICARE (military's health coverage) does not cover dependents on tours of less than 30 days).
- c. Employee (not dependents) who leaves employment for uniformed service is entitled to pay for 24 months of continued health coverage under the plan which has been covering him.
- d. Employee who loses coverage under spouse's health plan because spouse enters uniformed service, may enroll in his/her employer's health plan within 30 days.

D. Employer Defenses 38 U.S.C. §4312(d)(1)

1. Employer suffers a change in circumstances that make the reemployment impossible or unreasonable
2. The reemployment of a disabled person or a person no longer suited for the position would create an “undue hardship” on the employer
 - a. An undue hardship means “significant difficulty or expense: 38 U.S.C. §4303(15)
 - b. Employer must make reasonable efforts to accommodate such person
 - c. Employer must still look to employ such person in a position consistent with person’s circumstances.
3. Employment is nonrecurring or brief such that employee would not have an expectation of returning.
4. Burden of Proof is on the Employer

E. Enforcement 38 U.S.C. §4322-4324;

1. Administrative Remedy provided through the United States Department of Labor
 - a. (VETS): The Secretary of Labor’s responsibilities are carried out through the DOL’s Veterans Employment and Training Service (VETS)
 - b. Duty to investigate
 - c. If violation found must make reasonable efforts to ensure employer complies with the law; not empowered to force compliance.
 - d. The Veterans’ Benefits Improvement Act of 2008 adds deadlines to expedite the enforcement process.
2. Federal Employer: if the employer is a federal agency, the employee will proceed with a complaint before the Merit Systems Protection Board (MSPB).
 - a. Federal Employer: subject to USERRA’s provisions and Act held Federal Government should be “model employer” in carrying out the act.
 - b. Federal employee (with some exceptions) cannot bring private cause of action, must litigate before the MSPB; if employee receives adverse decision, may appeal to the Federal Circuit.
3. Private Cause of Action
 - a. Employees employed with a private employer may file a lawsuit without first filing a complaint with VETS.
 - b. While filing with VETS is not required, once initiated, employee must wait for completion of process prior to filing suit.
 - c. If VETS finds a violation, employee may ask that matter be forwarded to the Department of Justice for action and DOJ then may ask as employee’s counsel; if DOJ declines case, employee may still litigate as private matter.
 - d. May bring case in district court where employer maintains a place of business.
 - e. Remedies
 - i. Available remedies include compensation for lost wages, benefits, promotions, employment placement; temporary or permanent injunctions, temporary restraining orders and contempt orders.
 - ii. If violation is found to be “willful” then liquidated damages permitted
4. Actions against State Employer
 - a. USERRA applies to State governments acting as employer
 - b. 11th Amendment Considerations: uphill/ uncertain battle for employee taking legal action against state employer under USERRA case law. If case filed by DOJ on behalf of employee, then should proceed but if taken as private individual in federal court then may be dismissed pursuant to 11th Amendment.
 - i. Note: state’s political subdivisions (school districts, cities, counties, do not have 11th Amendment immunity. See *Sandoval v. City of Chicago*, 560 F.3d 703 (7th Cir 2009).
5. Statute of Limitation
 - a. The Veterans’ Benefits Improvement Act of 2008 amends USERRA to provide that there is no limit on the period for filing a complaint with the DOL, the Merit Systems Protection Board, or a federal or state court.
6. Arbitration: Courts appear to be holding that nothing in USERRA precludes the use of an Arbitration Agreement so long as the substantive rights of USERRA are not in any way limited. ABA Section of

Labor and Employment Law, *The Uniformed Services Employment and Reemployment Rights Act*, , Editors, Wood and Miazad, 2009, See *Landis v. Pinnacle Eye Care, LLC* 537 F.3d 559 (6th Cir. 2008); *Garrett v. Circuit City Stores, Inc.*, 449 F.3d 672 (5th Cir. 2006).

7. Case Law:

a. See *Serricchio v. Wachovia Securities LLC*, 2008 U.S. Dist. LEXIS 20043 (D.Conn. Mar. 14, 2008): Michael Serricchio worked as a financial advisor for Prudential Securities in Stamford Connecticut in 2001. His compensation was based solely on commission and he earned in excess of \$200,000 per year. Following 9/11/01 he was among the first reservist called to active duty and served until 2003. Upon return, he applied for reemployment. During his leave, Prudential had sold its brokerage to Wachovia and moved to Westport, Conn. Many of his colleagues had been terminated and most of his customers were being serviced by other financial advisors with other firms. Serricchio met the five eligibility requirements and Wachovia was considered a successor in interest to Prudential. Wachovia waited some months following the application for reemployment and then offered Serricchio the opportunity to cold call for accounts and take \$2000 draw per month against his commissions. Serricchio filed suit in the United States District Court for the District of Connecticut in 2004. The jury ultimately found that Wachovia had violated USERRA and that the violation was willful, thus providing for double damages under 38 U.S.C. §4323(d)(1)(c). The Court awarded back pay, liquidated damages for their knowing disregard of USERRA and reinstatement with an approximate monthly salary of \$12,300. Total award \$778,906 plus costs.

F. Relationship with Other Laws

1. Generally: “USERRA establishes a floor, not a ceiling for the employment and reemployment rights and benefits of those it protects.” 20 C.F.R. §1002.7(a). While states and employers are free to establish greater rights than those established in USERRA, they may not at any time diminish those rights and benefits guaranteed by the Act. ABA Section of Labor and Employment Law, *The Uniformed Services Employment and Reemployment Rights Act*, , Editors, Wood and Miazad, 2009 at 9-4.
2. Family and Medical Leave Act/ Military Family Leave Entitlements www.dol.gov
 - a. Generally, the Family and Medical Leave Act, an employee is entitled to up to 12 weeks of unpaid leave in a 12 month period for the birth or adoption of a child, the serious health condition of the employee, or for the employee to care for the serious health condition of his or her spouse, son, daughter, or parent. 29 U.S.C. 2612(a)(1).
 - b. FMLA applies to all public agencies, including state, local and federal employers, local education agencies and private employers who employ more than 50 employees in 20 or more workweeks a year.
 - c. In order for an employee to be eligible for FMLA benefits, an employee must have worked for a covered employer; have worked for employer for at least 12 months; have worked a minimum of 1250 hours during the 12 month period; and worked in a location where more than 50 employees are employed within a 75 mile radius.
 - d. 10/09 National Defense Authorization Act (NDAA) signed expanding military leave entitlements of the Family and Medical Leave Act by expanding both the ‘qualifying exigency’ leave and the military caregiver leave that became effective in January 2008.
 - e. Eligible employees may take up to 12 workweeks of job-protected leave in a 12 month period for any qualifying exigency arising out of the active duty or the call to active duty status of a spouse, son, daughter, or parent. Qualifying exigency leave is available to a family member of a military member in the National Guard or Reserves.
 - f. Qualifying exigencies include: short notice deployment (deployment in less than 7 days); Military events and related activities (including funerals); Childcare issues arising from the call to duty of one parent; Organizing financial and legal arrangements; attend counseling; taking up to five days to spend with serviceperson who is on temporary leave; post-deployment activities;
 - g. Eligible employees may take up to 26 workweeks of job-protected leave in a 12 month period to care for a covered service member with a serious injury or illness.
3. Congressional Omnibus Budget Reconciliation Act of 1986 (COBRA) 29 U.S.C. §1162

- a. USERRA requires an employer to offer individuals the option to self-pay up to 24 months of continued health insurance coverage. Provision applies to employers with fewer than 20 employees (the threshold amount for COBRA).
 - b. If leave is less than 31 days then payment must equal normal contribution.
 - c. If leave exceeds 31 days then employer may request payment of up to 102% of premium amount.
4. Heroes Earnings Assistance and Relief Act of 2008 (Heart Act)
- a. Amends Internal Revenue Code: Section 414(u) of the Internal Revenue Code provides rules regarding the intersection of USERRA and the rules governing tax-qualified retirement plans. Section 414(u)(8) states, in part, “that an employer maintaining a plan is treated as meeting the requirements of USERRA only if, an employee reemployed under USERRA is treated as not having incurred a break in service because of the period of military service, the employee’s military service is treated as service with the employer for vesting and benefit accrual purposes, the employee is permitted to make additional elective deferrals and employee contributions in an amount not exceeding the maximum amount the employee would have been permitted or required to contribute during the period of military service in the employee actually had been employed by the employer during that period, and the employee is entitled any accrued benefits that are contingent on employee contributions or elective deferrals to the extent the employee pays the contributions or elective deferrals to the plan.” See www.irs.gov/irb/2010-06_IRB/ar09.html
 - b. Qualified retirement plans must permit survivors of participant who dies while on active duty in the Armed Services to receive any contingent survivor benefits that would have been paid in participant had returned to work the day before his death. §104(a) of the HEART Act/ §401(a)(37) IRC
 - c. Benefits are determined by plan provisions on the date of death
 - d. Applies to death occurring after January 1, 2007
 - e. Plan may chose to count the deceased participant’s military service for benefit accrual purposes
 - f. Differential Wage Payments to employee on active duty are treated as wages §105 HEART ACT/ §3401 IRC
 - g. Taxable as wages
 - h. Considered compensation for benefit plan purposes
 - i. Effective January 1, 2009
 - j. Early Distributions
 - k. Permanent exemption from 10% penalty tax on premature withdrawals from retirement plans for individuals called or ordered to active duty on or after December 31, 2007; §107 HEART ACT; (qualified reservist distribution defined in § 72(t)IRC: a distribution from an IRA or a distribution attributable to elective deferrals under a §401(k) or §403(b) to a member of the reserves who has been ordered or called to active duty for a period exceeding 179 days or for an indefinite period.
 - l. As of January 1, 2009, a participant on active duty for at least 30 days who takes a qualified reservists distribution cannot make an elective deferral to his 401(k) plan for 6 months from the date of the distribution.
 - m. Tax free distributions of unused benefits in health flexible spending account for member of armed forces reserves called ordered to active duty for at least 180 days.
 - n. Tax free rollovers of military death gratuities and Serviceman’s group life insurance to survivor’s Roth IRA or an education savings account. §109 HEART Act/ §408 Roth IRA/ §530 Coverdell Education Savings Account.
 - o. Credit to eligible small business employers that make eligible differential wage payments to qualified employees who are on active duty in the uniformed services for more than 30 days. See §111 of the HEART Act/ §45P IRC.
5. Americans with Disabilities Act (ADA)
- a. Generally: Title I of the ADA, which the U.S. Equal Employment Opportunity Commission (EEOC) enforces, prohibits private and state and local government employers with 15 or more employees from discriminating against individuals on the basis of disability. It generally requires covered employers to make “reasonable accommodations” – changes in the work place or in the

ways things are generally done so as to provide persons with disabilities employment opportunities.

b. Reasonable Accommodation: both USERRA and ADA contain provisions requiring reasonable accommodations/ reasonable efforts, however, USERRA requires employers to assist a veteran who is returning to employment in becoming qualified for a job (including providing training or retraining for the specific position). The reasonable accommodation provision of USERRA may include those who do not meet the definition under the ADA and USERRA applies to all employers regardless of size.

VI. Americans with Disabilities Act (ADA)

The purpose of the Americans with Disabilities Act (ADA) was to “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities.” 42 U.S.C. §12101. The ADA is a comprehensive civil rights law for persons with disabilities. The ADA contains three titles: Title I is employment; Title II governs public services; and Title III governs public accommodations and services operated by private entities. (www.ada.gov) This section examines the provisions of the ADA that more likely affect service members and veterans.

A. Title I of the ADA – Generally Title I of the ADA which the U.S. Equal Employment Opportunity Commission (EEOC) enforces, prohibits private and state and local government employers with 15 or more employees from discriminating against individuals on the basis of disability. It generally requires covered employers to make “reasonable accommodations” – changes in the work place or in the ways things are generally done so as to provide persons with disabilities employment opportunities. - “No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” §12111

1. Service-Connected Disability: A veteran with a service-connected disability may or may not meet the definition of definition under the ADA. A ‘disabled veteran’ means an individual who has served on active duty in the armed forces, was honorably discharged, and has a service-connected disability, or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the Department of Veteran Affairs or a military department. 5 U.S.C.A. §2108.
2. Applicant/ Employee must be qualified for the job; person with disability must meet employer’s requirements for the job and be able to perform essential duties (with or without reasonable accommodation).
3. Employers must make “reasonable accommodations” for employees with disabilities, changing the work environment or job duties to eliminate barriers that keep an individual from being able to perform the essential functions of the job.
4. Undue Hardship: Employers are not required to provide accommodations that would result in an undue hardship (significant difficulty or expense).
5. Hidden Disability: employers are not required to provide an accommodation unless requested by the applicant/employee or someone on their behalf.
6. On-going responsibility: Employers have a continuing obligation to provide reasonable accommodations should the needs or job change.

B. Disability under the ADA (§12102)

1. The term disability means with respect to an individual –
 - a. A physical or mental impairment that substantially limits one or more major life activities of such individual;
 - b. A record of such impairment; or
 - c. Being regarded as having such an impairment;
 - i. Major Life Activities: include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending,

speaking, breathing, learning, reading, concentrating, thinking, communicating and working. §12102

ii. Major Bodily Functions: a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. §12102

C. Title II. Reasonable Modification: businesses are required to make reasonable modifications in their policies, practices, or procedures when necessary so that persons with disabilities can be their customers; they are not required to make changes that fundamentally alter or change the nature of the business.

1. Facilities: businesses which were built or altered since the ADA went into effect must comply with the ADA Standards for Accessible Design so that the locale is accessible by those with modality disabilities, those with sensory disabilities and limited dexterity or grasping ability. Businesses have continuing obligation to remove architectural barriers when it is “readily achievable” to do so.

D. State Immunity. A state is not immune under the 11th Amendment of the Constitution from action in Federal or State Court under the ADA (§12202)

E. Federal Employers. Not covered by the ADA, but rather by the Rehabilitation Act of 1973 - 29 U.S.C. §794.

F. Prohibition against Retaliation and Coercion (§12203)

G. Attorney Fees. Prevailing party (other than the United States) by be awarded attorney’s fees.(§12205)

VII. The Service Members Civil Relief Act (SCRA) 50 U.S.C. §§ 501 – 596

The Service Members Civil Relief Act (SCRA) was signed in December 2003 and expanded the former Soldiers’ and Sailors Civil Relief Act (SSCRA). The Act delineates a broad range of rights and protections for those members of the armed forces who are called to active duty or deployed. These protections extend to Reservists and members of the National Guard while on active duty. The Act’s intent is to postpone and/or suspend a service member’s civil obligation while on active duty so as to enable such person to devote their entire energy and attention to the needs of the Nation. Provisions include matter of mortgage payments, lease agreements, pending trials, taxes and interest rate caps. Generally, the protection cover a service member and in certain instances extend to their dependents from the date of entering active duty and terminates 30 to 90 following discharge from active duty.

A. History: Originally enacted during World War I and termed the Soldiers’ and Sailors’ Civil Relief Act. The SCRA amended the Soldiers’ and Sailors’ Civil Relief Act and was signed into law on December 19, 2003.

B. Organization: The Act is divided into seven titles

1. Title I – General Provisions (50 U.S.C. §511-519)
2. Title II – General Relief (50 U.S.C. §521-527)
3. Title III – Rent Installment Contracts, Mortgages, Liens, Assignments, Leases (50 U.S.C. §531-538)
4. Title IV – Life Insurance (50 U.S.C. §541-549)
5. Title V – Taxes and Public Lands (50 U.S.C. §561-571)
6. Title VI – Administrative Remedies (50 U.S.C. §581-583)
7. Title VII – Further Relief (50 U.S.C. §591-596)

C. Purpose §502 : The purposes of this Act are ...

1. “To provide for, strengthen, and expedite the national defense through protection extended by this Act to service members of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and

2. “To provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of service members during their military service.”
3. Applicable to civil and administrative procedures only and not criminal.
4. Balancing of Interests: Act provides for the suspension of claims and protection from default judgment. In this way, it seeks to balance the interests of service members and their creditors, spreading the burden of national military service to a broader portion of the citizenry. *Engstrom v. National Bank of Eagle Lake*, the Fifth Circuit acknowledged the balancing required when it states “although the act is to be liberally construed it is not to be used as a sword against persons with legitimate claims” 47 F.3d, 1459, 1462 (5th Cir. Texas 1995).

D. Title I – General Provisions (50 U.S.C. §§ 511-519)

1. Definitions (§ 511)
2. Protection of Persons Secondarily Liable § 513
3. Extension of Protections to Citizens serving with allied forces § 514
4. Notification of Benefits § 515
5. Extension of Rights and Protections to Reserves ordered to report for military service and to persons ordered to report for induction § 516
 - a. Protections of Act valid during period of active duty and upon the receipt of active duty orders
6. Waiver of Rights pursuant to Written Agreement §517
 - a. Such waiver is only effective if in writing and is executed as an instrument separate from the obligation or liability to which it applies”
 - b. Specific actions requiring waivers in writing
 - c. Prominent display of certain contract rights waivers
 - d. (An agreement by a service member to waive SCRA rights pursuant to a divorce decree does not waive SCRA rights to any subsequent litigation to enforce or interpret the divorce decree) See *Murdock v. Murdock*, 526 S.E.2d 241, 247(S.C. 1999). Such waiver must be foreseeable, voluntary, and intentional. Id.
7. Exercise of Rights under Act not to affect certain future financial transactions §518
8. Legal Representatives § 519
 - a. “ a legal representative of a service member is either an attorney acting on behalf of the service member ... or an individual possessing a power of attorney.”

E. Title II – Procedural Safeguards/General Relief §§ 521-529

1. Protection of Service Members against default judgments §521
 - a. Applies to any civil proceeding in which the defendant does NOT make an appearance
 - b. Affidavit requirement: in any action covered by this section the court, prior to entering a judgment for the plaintiff, shall require the plaintiff to submit an affidavit showing whether or not the defendant is in military service or an affidavit stating the plaintiff is unable to determine whether the defendant is in military service¹
2. Assignment of Counsel: should the court determine the defendant is in military service, the court shall not enter finding without first assigning an attorney to represent the defendant; if attorney assigned is unable to locate service member the actions of the attorney shall not waive any defense of the service member. If Military status is not ascertained the Plaintiff may be required to file a bond that may be later used to indemnify the defendant against any loss or damage if the defendant is later found to be in military service.
3. Penalty for submitting false affidavit

¹ To determine if Party is in Military, Apply for Information from Department of Defense; Contact: Defense Manpower Data Center (Attn: Military Verification)
1600 Wilson Blvd., Suite 400, Arlington, VA 22209-2593
Telephone: 703-696-6762; Fax: 703-696-4156

Internet Inquires: <https://www.dmdc.osd.mil.owa.scra.home> enter last name and social security number of the individual; if Social Security Number of person is unknown request may be made in writing for search with name and date of birth given as identifying information.

4. Stay of Proceedings: in action where the defendant is in military service, the court shall grant a stay of proceedings for a minimum of 90 days upon the application of counsel, or on the court's own motion, if the court determines that:
 - a. there may be a defense and a defense cannot be presented without the presence of the defendant
 - b. After due diligence the counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.
5. Stay of Proceedings when Service Member has Notice §522
 - a. Application: section applies to any civil action or proceeding in which the plaintiff or defendant at the time of filing an application under this section is in military service or is within 90 days after termination of or release from military service and has received notice of the action or proceeding
 - b. Stay of Proceedings: at any time prior to the entering of the final judgment the court on its own motion or upon the application of the service member stay the action for not less than 90 days if certain conditions are met.
 - c. Conditions for Stay:
 - i. letter or other communication indicating which current military duty requirements materially affect the service member's ability to appear and stating a date when the service member will be available to appear
 - ii. A letter from the commanding officer stating current military duty prevents appearance and leave is not authorized at the time of the letter.
 - iii. Additional stay may be requested by showing the same proof as initial stay application
6. Protection of Persons Secondarily Liable on Service Member's Obligation 50 U.S.C. §513
 - a. persons who are either primarily or secondarily liable with a service member on an obligation or liability with the same rights to delay actions and vacate judgments as service members.
7. Stay/Vacation of Execution of Judgments, Attachments 50 U.S.C. §524
 - a. authorizes court to stay execution of a judgment or order entered against a service member;
 - b. authorizes court to vacate or stay an attachment or garnishment on service member's property
 - c. same rules as §522 + suit giving rise to judgment must have commenced prior to, during, or within 90 days after military service.
8. Tolling of Statute of Limitations 50 U.S.C. §526
 - a. tolls statute of limitation during the period of active duty of any military plaintiff or defendant
 - b. no need to show material effect
 - c. Applicable: state, municipal governments, probate, bankruptcy and admin proceedings; Not applicable to periods of limitations imposed by IRS

F. Financial Protections

1. SIX Percent Interest Cap § 527
 - a. Allows service member to reduce interest on debts that existed prior to entry on active duty to 6%
 - b. Non-Mortgage obligations: 6% remains in effect during active duty
 - c. Mortgages: 6% remains in effect for active duty +1year
 - d. Interest >6% is forgiven not deferred
 - e. Service member must provide written notice and copy of military order
 - f. Court may grant creditor relief from 6% rule upon showing that service members' ability to pay is not materially affected by service
2. Fines and Penalties on Contracts § 523
 - a. When stay granted pursuant to SCRA no fine or penalty may be accrued
 - b. If no stay and penalty incurred, court may grant relief if showing that ability to pay was materially affected.
3. §518: Exercise of Rights not to Affect Certain Future Financial Transactions

G. Evictions, Lease Terminations, Installment Contracts, Mortgages, etc.

1. Eviction and Distress §531: Landlord MUST obtain a Court Order in order to evict service member and/or dependents; does not preclude eviction, but creates process. Stay provision, upon request and showing of material effect, court may grant stay for approximately 90 days.
2. Residential Lease Termination §535
 - a. Service members may terminate residential leases under certain conditions: (1) lease was executed prior to active duty service, or (2) while on active duty, the service member executes a lease and thereafter receives PCS orders, or (3) while on active duty the service member executes a lease and thereafter receives orders to deploy for 90 days or more.
 - b. Joint Leases with Dependents: termination of lease under §535 of SCRA terminates any obligation a dependent may have under the lease.
3. Automobile Lease Termination §535 - May terminate lease under certain conditions; prohibits early termination charges
4. Cellular Telephone Contract Termination §535(a) - May terminate or suspend contract under certain conditions; prohibits early termination charges or reactivation fees
5. Installment Contracts §532- court order required to rescind/terminate installment contract; court order required to repossess; Stay may be granted upon a showing of material effect.
6. Mortgage Protections §533 – applies to mortgages entered into prior to entry on active duty
 - a. Court order required for foreclosure; protection continues for 9 months past active duty
 - b. Stay protection: stay may be granted on court's own motion, or upon application of service member or dependent upon showing of material effect, subsequent stays may also be granted upon same showing.
 - c. Court may also fashion equitable adjustment – ex.: change the payment plan to accommodate decrease in available income.
7. Appraisals Following Foreclosure and Repossession §534
8. Anticipatory Relief §591: provides mechanism by which service member may initiate action rather than waiting for creditor to commence proceedings against them.

H. Title IV - Life Insurance

1. Life Insurance 50 U.S.C. §541-549
2. means by which any person entering active duty may apply for continued protection by commercial life insurance... upon application may have the premiums and interest for certain types of commercial life insurance guaranteed for period of military service + 2 years
3. Health Insurance Reinstatement 50 U.S.C. §594
 - a. Service members are entitled to have civilian health insurance reinstated then they return to civilian life following active duty
 - b. USERRA = governing body for service members participating in employer-offered health plans.
4. Professional Liability Protection 50 U.S.C. §593
 - a. Provides that professional liability insurance may be suspended during a period of active duty for certain professions (health care/ legal services)

I. Title V - Taxes and Public Lands

1. Residence for Tax Purposes §571
2. Military income is deemed earned in the state of domicile
3. Personal property – deemed located in the state of domicile rather than host state
4. Deferral of Collection of Income Taxes §570 - section defers collection of tax during active military duty, NOT the filing of returns; service member must show material effect
5. Non-Income Personal and Real Property Taxes §561

J. Voting Rights

1. 50 U.S.C. §595 ... for voting purposes, a service member neither acquires nor loses residence or domicile solely by residing in a given state pursuant to military orders

2. Unless service member takes affirmative steps to register to vote in host state, home state registration remains valid.

K. Enforcement

1. Civil Enforcement: many of the same protections available under state law see New York SCRA found in the New York Military Law §§300-328
2. Criminal Penalties: criminal penalties are available for violations of several SCRA provisions including eviction and distress (§531), installment contracts (§532), filing a false affidavit (§521), mortgages and trust deeds (§533), enforcement of storage liens (§537), assignment of life insurance policies (§536) and seizure of property following termination of a lease (§535).
 - a. See *United States v. McLeod*, 2008 WL 114789(U.S. Dist. Ct. W.D. Mich) Court affirms misdemeanor conviction, sentence of 6 months and order for restitution against defendant found to have violated §531 of the Servicemembers Civil Relief Act – Unlawful Eviction of Dependents of a Servicemember without a court order.
3. The Department of Justice – Civil Rights Division has authority to enforce the Servicemembers Civil Relief Act. – Should a military attorney not have success in advocating rights pursuant to SCRA they may contact the Department of Justice who may seek to resolve matter or ultimately litigate.
www.usdoj.gov/crt/military

L. Case Law

1. *Beach v. Green Tree Servicing LLC*, 2009 U.S. Dis. Lexis 51451, 2009 (Texas) - Rooker-Feldman doctrine applied to case where plaintiff sought review of State court decision. The doctrine mandates that no court of the United States, other than the Supreme Court, can entertain a proceeding to reverse, modify, or otherwise engage in appellate review of, a state court decision. Couple brought challenge under SCRA. Husband a Navy Reservist and wife, jointly owned home. Wife's claims were denied as having been litigated in state court and any remedies must be done on appeal in state court. The husband must assert any SCRA claims pursuant to the arbitration clause signed in the initial agreement.
2. *United States v. B.C. Enterprises*, 2009 U.S. Dis. Lexis 107591 (Virginia) - United States filed suit against defendants on behalf of active duty service members whose vehicles were sold, alleging that the auctions were done in violation of the SCRA. Court found liability under SCRA and sent case back for consideration of damages.

VIII. Taxes and Finance

The Internal Revenue Service has promulgated a series of rules and provisions pertaining to those currently in the armed forces, reservists and veterans and can generally be found on their web site (www.irs.gov) and in their publications. Rules relating to what constitutes gross income, the treatment of pensions and retired pay, funds administered through the Veterans Administration as well as available extensions available to those currently serving in the Armed Forces. Additional provisions relating to personal finance are included in the Servicemembers Civil Relief Act such as interest rate caps for certain debt and loans available to those currently serving in the Armed Forces.

A. Internal Revenue Service Provisions see www.irs.gov

1. Extensions Available
2. Earned Income Tax Credit (Working Families Tax Relief Act of 2004)
3. Heroes Earned Retirement Opportunities (HERO)... taxpayers can now count tax-free combat pay when determining whether they qualify to contribute to either a traditional or Roth IRA
4. Active Duty Reservists: can take payments from their 401-k and 403-b accounts without having to pay early distribution tax (Pension Protection Act of 2006)
5. See Internal Revenue Service Publication 3 “Armed Forces’ Tax Guide”
6. See Internal Revenue Service Publication 525 “Taxable and Nontaxable Income”

7. Differential Wage Payments: treated as compensation and are subject to income tax withholding – money paid to employee who is serving to compensate for the salary differential experienced with the call to duty
8. Military Retirement Pay: If retirement pay is based on age or length of service, it is taxable and must be included in your income as a pension.
 - a. Military Retired Pay’ - Armed Forces offer a pension (technically a "reduced compensation for reduced services.") with benefits, that starts the day you retire; with a cost of living increase each year. 10 USC 1401: under the plan a service member is entitled to receive monthly payments after 20 years of qualified military service
9. Qualified reservist Distribution: If a Qualified reservist distribution is received of all or part of the balance in your health flexible account because a reservist has been called to active duty for a period of 180 days or more the QRD is treated as wages.
10. See Internal Revenue Service Publication 907 “Tax Highlights for Persons with Disabilities”
 - a. VA Disability Benefits received through the VA are not to be included in gross income
 - b. Veteran’s Benefits paid under any law, regulation or administrative practice administered by the VA are not to be included in gross income including:
 - i. Education, training and subsistence allowances
 - ii. Disability compensation and pension payments for disabilities paid to a veteran or to their family
 - iii. Grants for homes designed for wheelchair living
 - iv. Grants for motor vehicles for veterans who have lost their sight or the use of their limbs
 - v. Veterans’ insurance proceeds and dividends paid to either veteran or beneficiary
 - vi. Interest on insurance dividends left on deposit with the VA
 - vii. Benefits under a dependent-care assistance program
 - viii. Death gratuity pad to a survivor of a member of the armed forces who died post 9/10/01
11. Heroes Earnings Assistance and Relief Act of 2008 (Heart Act)
 - a. Amends Internal Revenue Code: Section 414(u) of the Internal Revenue Code provides rules regarding the intersection of USERRA and the rules governing tax-qualified retirement plans. Section 414(u)(8) states, in part, “that an employer maintaining a plan is treated as meeting the requirements of USERRA only if, an employee reemployed under USERRA is treated as not having incurred a break in service because of the period of military service, the employee’s military service is treated as service with the employer for vesting and benefit accrual purposes, the employee is permitted to make additional elective deferrals and employee contributions in an amount not exceeding the maximum amount the employee would have been permitted or required to contribute during the period of military service in the employee actually had been employed by the employer during that period, and the employee is entitled any accrued benefits that are contingent on employee contributions or elective deferrals to the extent the employee pays the contributions or elective deferrals to the plan.” See www.irs.gov/irb/2010-06_IRB/ar09.html
 - b. Qualified retirement plans must permit survivors of participant who dies while on active duty in the Armed Services to receive any contingent survivor benefits that would have been paid in participant had returned to work the day before his death. §104(a) of the HEART Act/ §401(a)(37) IRC
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 - f. Differential Wage Payments to employee on active duty are treated as wages §105 HEART ACT/ §3401 IRC
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 - h. Considered compensation for benefit plan purposes
 - i. Effective January 1, 2009
 - j. Early Distributions

k. Permanent exemption from 10% penalty tax on premature withdrawals from retirement plans for individuals called or ordered to active duty on or after December 31, 2007; §107 HEART ACT; (qualified reservist distribution defined in § 72(t)IRC: a distribution from an IRA or a distribution attributable to elective deferrals under a §401(k) or §403(b) to a member of the reserves who has been ordered or called to active duty for a period exceeding 179 days or for an indefinite period.

l. As of January 1, 2009, a participant on active duty for at least 30 days who takes a qualified reservists distribution cannot make an elective deferral to his 401(k) plan for 6 months from the date of the distribution.

m. Tax free distributions of unused benefits in health flexible spending account for member of armed forces reserves called ordered to active duty for at least 180 days.

n. Tax free rollovers of military death gratuities and Serviceman's group life insurance to survivor's Roth IRA or an education savings account. §109 HEART Act/ §408 Roth IRA/ §530 Coverdell Education Savings Account.

o. Credit to eligible small business employers that make eligible differential wage payments to qualified employees who are on active duty in the uniformed services for more than 30 days. See §111 of the HEART Act/ §45P IRC.

B. Military Spouses Residency Relief Act (Public Law 111-97)

1. Amends the Servicemembers Civil Relief Act (SCRA); effective tax year 2009

2. Rules relating to the domicile or residence of a military spouse: Act provides certain tax relief for spouses of service members who are present in a state solely to be with the service member when the service member is in that state in compliance with military orders.

3. A military spouse cannot lose or acquire residence or domicile in a state when the military spouse is located in a simply to be with a service member who is present in compliance with military orders. (SCRA extended this protections previously to the service member and not the spouse).

4. See NY Tax section for further discussion

5. 'Survivor Benefit Plan: SBP is an insurance plan that pays an annuity in the event of service member's early death (stoppage of retired pay); survivor outliving the benefits or inflation. Spousal coverage is automatic and may not be waived without the written consent of spouse. Social Security offset was phased out in 2008. 10 USC §1451; If premium is paid upon death the beneficiary will receive 55% of the base amount. There may only be one beneficiary. The premium is deducted from the disposable retired pay on a pre-tax basis. The annuity payments are generally taxable for Federal Income Tax purposes. See Department of Defense Financial Management Regulations Vol.7B, Chapter 46 (December 2009)

IX. Other Provisions

A. Social Security www.socialsecurity.gov

1. Generally, earnings for active duty military service and training has been covered under Social Security since 1957. Social Security has covered inactive service in the Reserves since 1988. Special credit was given to those who served prior to 1957. Social security payments should not be affected by the amount of retired military pay.

a. Under some circumstances special earnings can be credited to military pay for purposes of Social Security, as to affect the distribution upon receipt; the extra earnings are added to the earnings upon application for Social Security; this program stopped in 2002 and is not longer available for service after that date.

b. must show proof of military service upon application

B. Supplemental Security Income

1. Generally those who leave the United States for 30 or more days are no longer entitled to receive their SSI payments. However, children of Military Personnel are still entitled to receive their SSI payments

though their parents are stationed overseas. See www.socialsecurity.gov/ssi/spotlights/spot-military-overseas.htm

C. Federal Tort Claim Act (FTCA): The Federal Tort Claim Act is a statute in which the United States permits suits to be brought against itself. Generally, the Act allows the United States to be found liable for injuries caused by the negligent or wrongful actions or omissions of any federal employee acting within the scope of their employment. There are three major exceptions to a finding of liability including the Feres doctrine, which prohibits suits from military service members for injuries sustained incident to service, the discretionary function exception and the intentional tort exception. The United States can only be sued “under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.” 28 U.S.C. 1346(b). Thus, it does not apply to circumstances where the conduct could not be performed by a private person.

1. Definitions: 28 U.S.C.A. §2671
2. Civilian Contractors
3. Combatant Activities Exception
4. Construction and Application of FTCA
5. Drugs/ Vaccines/ Medications Approved for use by U.S. 28 U.S.C.A. §1346
6. Recovery 28 U.S.C.A. §1346(b): the government can only be sued under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place with the act or omission occurred.
7. Foreign Tort Claims 28 U.S.C.A 2680(k)
8. Intentional Tort Exception 28 U.S.C. §2680: provides the government is not liable when any of its agents commits the torts of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.
9. Westfall Act 28 U.S.C.A. 2679

D. Insurance

1. Jurisdiction - What constitutes claim under contract of veteran’s or service member’s insurance within meaning of 38 U.S.C. §784(a) conferring jurisdiction on district courts to review claims
2. Beneficiary - Who constitutes parent under 38 U.S.C. §770(a) for entitlement of proceeds of group life insurance with no named beneficiary, no spouse or children
3. SCRA
 - a. Life Insurance 50 U.S.C. §541-549
 - b. Health Insurance Reinstatement 50 U.S.C. §594
 - c. Professional Liability Protection 50 U.S.C. §593

X. Veterans

According to the Department of Veterans Affairs a 2007 study determined there to be 23,816,018 veterans living in the United States and approximately 1, 065,749 living in New York State. Veterans of the United States armed forces may qualify for a range of programs, entitlements and services administered by the U.S. Department of Veterans Affairs. These benefits are largely enumerated in Title 38 of the United States Code. Additional information may be found at www.va.gov. These benefits include provisions for VA health care, education and training, pensions, life insurance, transition assistance, home loans and burial and memorial benefits. Title 38 of the United States Code also, in certain cases, extends benefits to qualifying survivors and dependents of veterans. Applications for assistance may be made to the U.S. Department of Veterans Affairs and is often done through the local VA office. A system and procedure has been established for challenging decisions made by the VA which a veteran contests. This section provides an overview of the benefits and entitlements under Title 38 and is not exhaustive in nature.

A. Definition - 38 U.S.C. §101: A Veteran means a person who served in the active military, naval, or air service and who was discharged or released therefore under conditions other than dishonorable.

B. Federal Benefits for Veterans, Dependents and Survivors

1. Broad range of programs administered by U.S. Department of Veterans Affairs (VA) and legislated in Title 38 of the United States Code.
2. Certain VA benefits require service during wartime

C. VA Health Care Benefits (www.va.gov/health)

1. Eligibility: a person who served in the active military and who was discharged or released under conditions other than dishonorable MAY qualify for VA health care benefits.
2. Enrollment: upon enrollment, veteran is placed in one of eight priority groups. The priority groups are used to balance the demands for VA health care coverage.
3. Copays: for those in specific priority groups and found to be of certain means, free coverage may not be available, but rather a portion of coverage may be granted, creating a system of co-pays.
4. Financial Assessment: Veterans seeking coverage must provide financial information including household income, net worth, retirement pay, stocks bonds and all residences other than primary residence. If total income exceeds threshold amount (currently \$80,000) then veteran may only be eligible for co-pay services.
5. Readjustment Counseling Services: is designed to help combat veterans readjust to civilian life; upon a finding of eligibility, individual, group, family and marital counseling services are available.
6. Prosthetic and Sensory Aids: Veterans receiving VA health care for any condition may receive VA prosthetic appliances, equipment and services.
7. Home improvements and structural alteration: The VA will provide up to \$4100 for service-connected disabilities and \$1200 for non-service-connected disabilities to make home improvements necessary to meet the needs of the veteran with a disability.
8. Services for blind and visually impaired: special VA health benefits are available for those who are blind or visually impaired including counseling, home improvements, automobile grant, electronic aids, guide dogs and other relevant services.
9. Mental health care treatment: those eligible for VA health care may apply for mental health treatment
10. Work restoration programs: for those receiving VA health benefits, vocational assistance and therapeutic work opportunities may be available.
11. Domiciliary care: provides rehabilitative and long-term care for those eligible and rehabilitative care for those veterans who are homeless.
12. Outpatient dental treatment: Must be found to be eligible to receive the services.
13. Nursing Home Care: The VA provides nursing home services through three programs, Community Living Centers (owned and operated by the VA), state veteran nursing homes and contract community nursing homes. Each has distinct criteria for admission.
14. Emergency Medical Care in Non VA Facilities: The VA generally does not compensate for care received outside a VA facility. The exception is medical emergencies where VA facilities were not available or feasible under the circumstances.

D. Service Connected Disabilities

1. Disability Compensation: monetary benefit paid to veterans who are disabled by an injury or illness that was incurred or aggravated during active military service; varies with the degree of disability and number of dependents and is paid monthly; benefits are not subject to federal or state income tax
2. Veterans with a disability of 30% or more are also entitled to additional compensation for their dependents. 38 USC §1115
3. Presumptive Conditions for Disability Compensation: Vietnam veterans suffering from certain enumerated conditions will be granted a presumption that their disability is service-connected. There are currently 15 presumed illnesses recognized by the Department of Veterans Affairs. See Department of Veterans Affairs News Release: Oct. 13, 2009.
3. The disability pay is the property of the veteran and not the property of the wife/child.
4. Programs for Service-Connected Disabilities §3100
 - a. Vocational Rehabilitation and Employment: program assists veterans who have service-connected disabilities obtain and maintain suitable employment.

- b. Specially Adapted Housing Grants: certain service members and veterans with service-connected disabilities may be entitled to a Specially Adapted Housing (SAH) grant from VA to help build a new specially adapted house, to adapt a home they already own, or buy a house and modify it to meet their disability-related requirements
- c. Adapting an Automobile
- d. Clothing Allowance

E. Disability Pensions

1. Eligibility for Disability Pension: pension is a benefit paid to wartime veterans who have limited or no income and who are age 65 or older, or, if under 65, who are permanently and totally disabled. Veterans who are more seriously disabled may qualify for Aid and Attendance or Household benefits. These are benefits paid in addition to the basic pension rate.
2. Medal of Honor Pension: those in receipt of a medal of honor receive a monthly pension, currently \$1194.
3. Improved Disability Pension: a maximum amount is set and may be reduced by the amount of household income
 - a. 'Aid and Attendance' – available to certain wartime veterans and surviving spouses of deceased wartime spouses; available to those with in-home care or who live in a nursing home or assisted living facility; financial assessment is done which includes all household income, assets retirements funds, investments etc, does not include primary residence, may count unreimbursed medical expenses against income, including the cost of nursing care or nursing home care.
www.vba.gov/bln/21/pension/betpen.htm#7
 - b. Housebound is paid in addition to monthly pension. Like Aid and Attendance, Housebound benefits may not be paid without eligibility to pension. Eligibility must first be determined

F. Education and Training (www.gibill.va.gov) (1-888-GI-BILL-1) - Born from the legislative initiatives of the 1940s in response to the thousands of returning service men and woman the original GI Bill was signed by President Roosevelt on June 22, 1944. Currently there exists multiple educational benefits for returning service persons and one may opt for one benefit or may be eligible for multiple benefits. Benefits may extend to tuition and fees, housing allowances and funds for books and supplies. Available programs include the post 9/11 GI Bill, the Montgomery GI Bill, The REAP (Reserve Educational Assistance Program) and VEAP (Veterans Education and Assistance Program). Under certain programs a service member may opt to contribute to the educational program so as to afford greater benefits. Also, specific programs permit a service member to transfer benefits to dependents.

1. Educational benefits are not to be included in taxable wages. See Internal Revenue Service Publication 525 "Taxable and Nontaxable Income"

G. Home Loan Guaranty (www.homeloans.va.gov)

1. VA home loan guaranties are issued to help eligible service members, veterans, reservists and unmarried surviving spouses obtain homes, condominiums, residential cooperative housing units, and manufactured homes, and to refinance loans.
2. Loan Uses: it may be used to buy or build a home, repair/alter existing residence, refinance existing home loan or make energy efficient improvements.
3. Eligibility: there are periods of eligibility, conditions of service requirements, good credit rating, sufficient income, a valid Certificate of Eligibility and agree to live in property.
4. VA Appraisals: no loan will be issued without first being appraised by VA –assigned fee appraiser.
5. Closing Costs: all closing costs may be included in the loan.
6. Financing, Interests Rates and Terms: interest rates may be fixed or variable; loan amounts are based on geography and maximum county amount are set each year.
www.homeloans.va.gov/docs/2010_county_loan_limits.pdf

H. VA Life Insurance (www.insurance.va.gov)

1. Service Members' Group Life Insurance (SGLI)
2. SGLI Traumatic Injury Protection

3. Service Members' Group Life Insurance Family Coverage
4. Veterans' Group Life Insurance
5. SGLI Disability Extension
6. Accelerated Death Benefits (terminally ill may apply for one time pay of 50% of benefits in advance)
7. Service-Disabled Veterans' Insurance (may apply for additional \$10,000 in life insurance)
8. Veteran's Mortgage Life Insurance (for severely disabled veterans who have been approved for Specially Adapted Housing Grant)
9. Insurance Dividends Issued Annually

I. Burial and Memorial Benefits

1. Eligibility (www.cem.va.gov): veterans discharged from active duty under conditions other than dishonorable and service members who die on active duty, training, as well as spouses and dependent children may be eligible for VA burial and memorial services.

J. Reserve and National Guard

1. Eligibility for VA Benefits: those reservists who serve on active duty establish veteran status and may then be eligible for VA benefits, depending on the length of service so long as discharge or release from active duty was under conditions other than dishonorable. Those not activated may be entitled to some services.

National Guard: can become eligible if activated for federal service during a period of war or domestic emergency.

2. Qualifying for VA Health Care – may be eligible depending on timing of service; those discharge after 1/28/2003 are eligible for enhanced enrollment services (relates to the priority group in which one is placed).

3. Disability Benefits:

4. Montgomery GI Bill – Selected Reserve (may be eligible for up to 36 months of educational benefits)

5. Reserve Educational Assistance Program (REAP): program provides educational assistance payments to members of the National Guard and Reserve component, Select Reserve and Individual Ready Reserve who are called or ordered to active duty. Some reservists may contribute up to \$600 additional funds to the GI Bill to receive increased monthly benefits.

6. Home Loan Guaranty: need 6 years of honorable service; mobilized for at least 90 days or discharged with service-connected disability.

7. Life Insurance: eligible for many of the available insurance programs

8. Re-employment Rights: see Labor and Employment Section/ Uniformed Services Employment and Reemployment Rights Act

K. Homeless Veterans

1. www.va.gov/homeless

2. Available services

3. Grant and per diem funds to community agencies providing services to homeless veterans

4. Healthcare for Re-Entry Veterans Program: offers outreach, referrals and short-term case management assistance for incarcerated veterans who may have increased risk of homelessness.

5. Housing-Choice Voucher: program administered through US Department of Housing and Urban Development to provide permanent housing and case-management for those veterans who would not be otherwise able to live independently

6. DOL provides employment and training services, and grants to community organizations that provide counseling, job search and placement assistance for homeless veterans

7. Incarcerated Veterans (VA benefits are affected if a beneficiary is convicted of a felony and imprisoned for more than 60 days).

8. Transition Assistance

L. Transition from Military to VA

1. Transition Assistance Program: three-day workshop offered on military installations to help with transitions, including employment and benefit information

2. Educational and Vocational Training (available to service members, veterans and certain dependents at no charge (38 U.S.C. §3697): The Vocational Rehabilitation and Employment (VR&E) Program assists veterans who have service-connected disabilities obtain and maintain suitable employment. A veteran must have at least a specified disability rating with an employment handicap and released or discharged under other than dishonorable conditions. A VA counselor decides if a veteran has an employment handicap, upon decision, the counselor and veteran will create a rehabilitation plan. Rehabilitation services are provided under one of five tracks, the first being reemployment with previous employer. The period of rehabilitation services may extend for 12 years.
3. Unemployment Compensation (for those who do not return to civilian employment immediately; determined by home state)
4. Veterans Preference for Federal Jobs (Veterans Preference Act of 1944/(5 U.S.C. §2101):veterans who are disabled or who served on active duty during specified times are entitled to preference over others when hiring from competitive lists and also in retention during reductions.
5. Additional vocational, educational and counseling services available.

M. Procedure

1. Initiation of Claim
 - a. A Veteran, a veteran's dependents or a veteran's survivors are required to submit a plausible claim for an entitlement to VA benefits. Claim must be submitted to a Regional Office of the Department of Veterans Affairs. Following consideration, the Regional Office is required to render a decision and the veteran should receive written notice of the decision; such written notice will simply include if claim has been granted or denied. 38 U.S.C. 5104
Notice of Disagreement: Should the Veteran want to appeal the decision of the Regional Office, a Notice of Disagreement should be filed with the Regional Office, within one year from the decision date. 38 U.S.C. 7105
 - b. Statement of the Case: Upon receiving a Notice of Disagreement the Regional Office must prepare a Statement of the Case detailing the evidence, facts and regulations used in consideration of the original claim. The Statement of the Case will then be given to the claimant/veteran along with a VA Form 9 which must be completed by the Veteran in order to perfect the appeal. 38 U.S.C. 5104
 - c. Perfecting the Appeal: the Veteran must both file a notice of disagreement and a VA Form 9, which must be filed within 60 days of receiving the Statement of the Case.38 U.S.C. 7105
2. Board of Veterans' Appeals 38 U.S.C. §7103 (BVA)/(The Board)
 - a. Upon perfecting the appeal, the matter is transferred the Board of Veteran's Appeals (BVA/The Board). The Board may affirm the decision of the Regional Office, it may reverse a decision, it may remand the matter back to the Regional Office for further consideration or it may refer the matter back to the Regional Office with instructions that a specific matter be developed and a decision reached.
 - b. Time Frame: a veteran has 120 days from the stamped date of the Board decision to file a Notice of Appeal with the United States Court of Appeals for Veterans Court. Notices filed post 120 days will likely be dismissed as being untimely. See *Barrett v. Shinseki*, No. 02-2383 (Ct of Vet. App. 5/7/09)
 - c. Decisions and Process of The Board may be found at www.va.gov/vbs/bva
3. U.S. Court of Appeals for Veterans' Claims
 - a. Decision of Board of Veterans' Appeals may be appealed to the U.S. Court of Appeals for Veterans Claims (CAVC); The Court was created in 1988 as a mechanism for judicial review of decisions made by the Board of Veteran's Appeals.
 - b. Within 120 days of Board decision (see above)
 - c. May be represented or pro se;
 - d. Oral argument at the direction of the court
 - e. Either party may appeal to the U.S. Court of Appeals for the Federal Circuit and may seek review by the Supreme Court
 - f. The Court has specific Court Rules and Rules of Procedure that must be followed, which can be found at: www.uscourts.cavc.gov

g. Rule 46 of the Court Rules governs Admissions to Practice before the Court.

N. Other Federal Agency Benefits

1. USDA Provides Loans for Farms and Homes
2. Housing and Urban Development
3. Naturalization Preference (see citizenship section)
4. Small Business Administration
 - a. Planning assistance/ counseling/ training and loans available
 - b. Military Reservist Economic Injury Disaster Loan (available for self-employed reservists whose small business may be damaged through absence)
5. Social Security Administration
 - a. Generally there should be no reduction in Social Security because of your Military Benefits;
 - b. Credits for Military Service post 1956: generally those that served on active duty post 1956 social security payments were made; inactive/reserve paid since 1988
 - c. Military Service 1940-1956: service members did not pay social security taxes, however record was credited with special earnings
6. (SSI) Eligibility for Supplemental Security Income (those 65 and older and those who are blind or otherwise disabled may be eligible for monthly SSI payments if they have little or no income or resources.

PART TWO

NEW YORK STATE PROVISIONS

I. Veterans

A. Public Employment Rights

1. Prohibition against disqualification of veteran on account of disability or age; See N.Y. Civ. Serv. Law §87
2. Prohibition against disqualification of veteran on account of disability or age – Appointment as a Police Officer; See *Hart v. Kaplan*, 217 N.Y.S.2d 730 (1961); N.Y.Civ. Serv. Law §58
3. Retirement allowances of Teachers/War Veterans; N.Y. Mil. Law §245

B. Private Employment Rights

1. Reemployment Rights in Private Industry (N.Y. Mil. Law §246): proscribes an affirmative duty to reemploy those who left employ due to military service.
2. Enforcement of Rights: action may be brought in Supreme Court in the County in which the private employer maintains a place of business. N.Y. Mil. Law §317

C. Assistance and Welfare Provisions

1. Eligibility for Assistance
 - a. Pursuant to Social Services Law the following persons are eligible for assistance if such person is unable to provide for themselves, unable to secure support and not receiving assistance via another provision of the Social Services Law. Person Eligible: a veteran; spouse, child, grandchild (under 21) dependent parent; dependent children under 21 or incapacitated children of deceased veteran. See N.Y.Soc. Serv. Law §169
2. Administration: N.Y.Soc. Serv. Law §171-173
3. Veteran Advisory Committee: N.Y.Soc. Serv. Law §175-176: composition and duties
4. Division of Veterans' Affairs: N.Y. Exec. Law §31; §351
 - a. NY State Director of Veterans' Affairs shall be a veteran and appointed by the Governor; may create bureaus within division that are essential to carrying out functions.
 - b. Powers and Duties of Division: coordinate all services and facilities providing assistance to veterans and their families living in NY State. Maintain education/ counseling/ supervision of agencies/ promulgate rules/ make studies and analyses/ liaison to Federal Government/ render written reports to the State/ maintain hot line number for veterans
5. Assistance to Blind Veterans/ Surviving Spouse; N. Y. Exec. Law §362

D. New York State Veterans' Nursing Homes

1. Established to care for veterans and spouses, unremarried surviving spouses and army nurses. N.Y. Pub. Health Law §403; §2632 (application and preference for admission)
2. There are five located in New York State.
3. Eligibility:
 - a. applicant must require skilled nursing care
 - b. Be NY state resident for one year prior to application
 - c. Honorable discharge from Armed Forces
 - d. Must have had at least 30 days of active service
 - e. spouse may enter if eligible and married for at least one year prior
 - f. Veteran and spouse entering together will be given priority status.

E. Homes for Veterans

1. Program offers fixed-rate mortgages with interest rates 0.5% below the rates charged on State of New York Mortgage Agency (SONYMA) with closing cost assistance.
2. Eligibility: must be veteran who served in the active military, naval or air service and was discharged under conditions other than dishonorable.
3. Program Features:
 - a. need not be first time home-buyers
 - b. interest rate .5% less than standard rate
 - c. closing cost assistance up to 3% of requested loan amount or \$3000.
 - d. no points or origination fees
 - e. minimum borrower cash contribution.

F. Gold Star Parent Annuity – authorizes an annuity payment of up to \$500 per Gold Star parent of a deceased parent. Must meet eligibility requirements: gold star parent (10 U.S.C. §1126), resident of NY, income level less than 200% of the Federal Poverty Level.

G. Property Tax Exemption

1. NYS Veterans' Property Tax Exemption provides a partial exemption on real property taxes to veterans' of defined periods of war, certain family member, and those who received expeditionary medals. There are three levels of benefits, and benefits reflect if veteran served in combat and/or is disabled. See Real Property Tax Law §458.

H. Education Benefits: (Military Enhanced Recognition Incentive and Tribute Scholarship Program - MERIT) MERIT: Scholarship program makes scholarships available to military personnel and their dependents who reside in New York State and have either died, been declared missing or become permanently and severely disabled during active duty (federal or state duty). New York State Higher Education Services Corporation - www.hesc.org
Educational Leave of Absence to Perform Military Duty: Students are entitled to leave of absence for federal or state military duty and for one year following completion. www.hesc.org

I. Other

1. Monuments and Memorials
2. Exemptions from Fees and other Charges
 - a. Insurance Broker's License: N.Y. Ins. Law §2104
 - b. Birth, Death or Marriage Records: N.Y. Pub. Health Law §4173; N.Y. Dom. Rel. Law §19
 - c. Recording Certificates of Discharge: N.Y. Mil. Law §250
 - d. Free Use of Campsites: N.Y. Parks Rec. & Hist. Preserv. Law §13.19
 - e. Free Transportation: for those in national and state homes for disabled veterans and reduced rates for those attending schools or educational institutions under the Servicemen's Readjustment Act. See N.Y. Transp. Law §103; 38 U.S.C. §3001-3036
 - f. Reduced Cost Licenses and Permits: available to veterans with 40% or higher disability rating
3. Military Law §245: retirement allowances of certain war veterans
4. Military Law §246: Leave of absence for public employees who are war veterans to continue study
5. Power of Attorney Concerning Military Service Benefits: See N.Y. Gen Oblig. Law §5-1502J

II. Special Programs

A. Workers with Disabilities Program (55-c)

1. Program to place persons with disabilities in entry-level State jobs; persons need not take competitive exam but must meet education/ experience qualifications for the job.
2. Currently, the Division of the Budget allows state agencies to fill position under a hiring freeze with qualified 55-c appointments.
3. Section 55-c of the New York State Civil Service Law

B. NYS Veterans' Property Tax Exemption

1. Provides a partial exemption on real property taxes to veterans' of defined period of war, veterans who received expeditionary medals or certain family members. See. Real Property Tax Law §458

C. Supplemental Burial Allowance: up to \$6000 is authorized for certain military personnel killed in combat or while on active duty after 9/29/03

III. Family Law

A. Custody/ Support

1. Effects of Parents Military Service on Child Custody

a. See ALR 6th 577; Courts have reached varying results when looking at child custody issues when parent is in military. Some have looked at a parent's likely deployment as a factor, others have not, and some have looked at likely deployment as a primary factor.

b. See *Diffin v. Towne*, 787 N.Y.S.2d 677(Fam.Ct. 2004) affirmed 47 A.D. 3d 988 (3d Dep't 2008) Mom and Dad had joint custody arrangement with regards to their child, with the child primarily living with mom in NY. Mom was deployed in 2004 and made child care plan to include her husband to be the caretaker. Dad moved for custody. The court stayed the decision pursuant to mom's request under the NYSSCRA/ NY Mil Law §304 and §307 but issued dad a temporary custody order finding no extraordinary circumstances such as to deprive dad of custody. Upon mom's return from Iraq, the court concluded the trial and awarded dad primary physical custody. The court found that the child had adjusted well with dad, was doing well and was stable.

c. See *Edwin C. v. Charmaine P.*, 25 Misc 3d 1205 (Fam Ct. Jefferson Cty 2009) During ongoing custody dispute, mom deployed. Mom's child care plan included care by the maternal grandparents. Court found no extraordinary circumstances to deprive dad of custody; stay granted regarding final orders based on mom's application under New York Military Law.

d. See *Matter of Dickerson v. Robenstein*, 69 A.D.3d 1179 (3d Dep't 2009) Contested custody dispute, dad sought custody and mom sought to relocate to CT where her husband was stationed in Navy. Primary physical custody awarded to dad, court mentions that this may not be mom's last move because husband still in Navy.

e. See *Apololos v. Fairgorvice*, 802 N.Y.S.2d 807 (3rd Dep't 2005): Father (military)'s petition for custody filed against mother (non-military), Court did not specifically consider father's likely deployment as a factor in determination; Court determined that father who had recently returned stateside had maintained stable household, arranged psychological services for child and child was doing well in father's care.

f. See *Aylesworth v. Aylesworth*, 617 N.Y.S.2d 85 (4th Dep't 1994): Appellate Court determined that lower court erred in awarding mother's custody petition; the parents (father—in service) had a pre-existing agreement which called for temporary custody to sister when deployed and court saw no evidence to undue agreement.

B. Legislative Updates

1. Custody and Visitation Proceedings involving Members of the Military

a. Effective 11/19/09: Domestic Relations Law §240/ Family Court Act §651 and Domestic Relations Law §75-1: unless the parties have otherwise stipulated or agreed, an allegation that a parent has returned from active service in the military will automatically constitute a substantial change in circumstances sufficient to give the parent automatic standing to modify an order of custody or visitation, allowing the court to address the issue of the children's best interests.

b. Domestic Relations Law §75-1: during the time the parent is activated, deployed, or temporarily assigned to military service and the parent's ability to continue as the primary caretaker of the child is materially affected as a result of the military service, the court may not

issue any permanent orders, modifications or amendments what would affect or change a previous judgment or custody order as it existed on the date of the parent's activation, deployment, or temporary assignment to military service. The court may enter a temporary order, but only if there is clear and convincing evidence that temporary modification of the previous order is in the child's best interest. If possible the temporary order should provide for contact between the child and the parent in military service.

C. Issues Relating to Divorce and the Military

1. Military Pensions/ Military Retired Pay is divided according to the laws of the state which is granting divorce. Generally, in New York spouse is entitled to percentage of points earned during marriage. The Former Spouses Protection Act 10/10 rule relates to whether DFAS will pay spouse directly.

www.dfas.mil/militarypay/garnishment/fsfact.html

2. Survivor's Benefit Plan (the SBP election reduces the monthly payments and puts money aside in an annuity for the surviving spouse; coverage automatic; spouse must provide written consent to waive coverage); SBP can be made part of the divorce agreement under the Former Spouses Protection Act

a. SBP participants who reach 70 and have made 30 years of payments no longer have to pay premiums for continued coverage.

b. A surviving spouse's SBP annuity is not longer reduced when they reach 62 and become eligible for social security.

c. SBP annuity may extend to surviving spouse, child or former spouse.

3. VA Disability Check: military retired pay and disability check are now two different checks and ex-spouse may be entitled to one and not the other, two different determinations.

4. Health Coverage:

a. If married 20+ years and overlapped with 20 years of service than upon divorce spouse will keep all military benefits until death or remarriage.

b. If married 15 years with 15 years of military service than there is a phase out period of one year.

c. For all others may apply for Continued Health Care Benefit Program (CHCBP) -temp health care coverage; must enroll within 60 days of loss of eligibility for military health care.

www.humana-military.com/chcp/main.htm

D. Determining Income for Child Support

1. Domestic Relations Law §240 delineates what shall be included in gross income for purposes of consideration of child support payments; including disability benefits, veterans benefits and pensions and retirement benefits, among others.

E. Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) – grants exclusive and continuing jurisdiction in a child custody litigation in the child's home state. Not a substantive statute, rather determines which states should exercise jurisdiction. Nearly every state has adopted, New York UCCJEA is found in Domestic Relations Law §76.

IV. Pensions and Retirement Systems

A. Retired Military Officers

1. A retired military officer is entitled to continue to receive his/her military retirement pension while receiving compensation as an employee of the State of New York. See *Baker v. Regan*, 509 N.Y.S.2d 301 (1986); Retirement and Social Security Law §212(1).

2. Military Law §214: a public officer or employee, while engaged in ordered military duty, or his or her beneficiary is entitled to all the benefits of the pension or retirement system of which he or she is a member (except accidental disability/accidental death).

3. Time away on military duty must be counted for the purpose of determining his or her length of total service under the retirement system. Military Law §242

4. Military Law §244/ Retirement and Social Security Law §1000; credit for military service during periods of military conflict; may apply for a three year service credit after having attained 10 years of service; must pay into pension accumulation fund for that 3 year credit.
5. Public employees, while on military duty, are required to pay into the pension or retirement systems in which they intend to return the amount they would have contributed had their employment been continuous. See. Military Law §243

V. New York State Soldiers’ and Sailors’ Civil Relief Act – Military Law §300-328

A. Legislative Findings: “Legislature recognizes that the individuals who are members of the military make a tremendous sacrifice, especially in times like these when our military personnel are in many locations throughout the world and here in New York fighting against terrorism. ... Steps have been taken to ease some of the burdens that these brave men and women encounter, to allow them to focus their full energy on defending our country ... legislature recognizes that members of the military should not be discriminated against based upon their military status in areas such as housing, employment and education.” §300

B. Where Applicable: The NYSSCRA applies to all civil proceedings in all New York state courts of record or not. Scope extended to protect service members in civil matters before any judicial or administrative proceedings commenced in any court or agency in all federal, state, or territorial courts.

C. Those Protected

1. §301-a: Benefits to persons in and persons enlisting in the state organized militia
2. §301-b: Extension of benefits to dependents: dependents of military person entitled to the benefits accorded persons in the military upon application to the court, unless in the opinion of the court the ability of the dependent to comply with obligation is not impeded by reason of the military service.

D. Stays

1. §302: Stay, to persons secondarily liable
2. §303: Representation, opening judgment; default
3. Affidavit of Status: plaintiff must file affidavit setting forth facts showing that person is not in military service; proper affidavit should include date and location of investigation and sufficient facts to support a finding that person is not in military service. See *LLC. v. Riaz* 745 N.Y.S.2d 389(2002).
4. Default judgment may not be entered without showing that person against whom it is sought is not in military service. See *Citibank, N.A. v. McGarvey*, 765 N.Y.S.2d 163 (2003).
5. §304: Proceedings to be Stayed unless interest unaffected by Military Service
6. Stay may be granted upon request or on court’s own motion upon a showing that a person’s ability to prosecute the action or conduct a defense is materially affected by reason of his or her military service.
7. §305: Relief against fines and penalties
8. §306: Actions against persons in service:
9. Court may upon application or on its own motion, unless in the opinion of the court the ability to comply with order is not materially affected by military service,
 - a. Stay the execution of any judgment or order entered against such person, as provided in this act; and
 - b. Vacate or stay any attachment or garnishment of property, money or debts the hands of another, whether before or after judgment as provided in this act.
10. §307: Continuance of Stay; stay may be continued upon similar showing for period of military service + 3 months

E. Statutes of Limitation

1. §308: Statutes of Limitations and statutes of a similar nature; time of military service not included
2. §308-a: Waiver of professional continuing education requirements
3. §308-b: Extension of license, certificate or registration

F. Evictions/ Rent/ Termination of Lease

1. §309: Evictions; restraint
 - a. No eviction or distress shall be made during period of military service of any person in military service, spouse, dependent children exempt upon leave of court.
 - b. Court may stay proceedings upon application or on its own motion unless in the opinion of the court the ability to pay is not materially affected by military service
 - c. Any person taking part in eviction/distress without court order shall be guilty of a misdemeanor
2. §310: Liability for rent accruing after induction; termination of lease

G. Installment Purchases

1. §311: Installment purchases
2. §311-a: Termination of motor vehicle lease contracts
3. §311-b: Cancellation without penalty of certain additional rental contracts

H. Mortgages

1. §312: Mortgages – applies to mortgages on real or personal property owned by person in military service at time of commencement of the period of his military service; Court may stay proceedings as provided in this act or make such other disposition of the case as may be equitable to conserve the interests of all parties.
 - a. No sale, foreclosure or seizure of property for nonpayment.... Shall be valid if made during the period of military service, or within 6 months thereafter, unless upon an order of sale previously granted by the court
 - b. Consequences of violation = misdemeanor

I. Future credit/rights

1. §313-a: Exercise of rights under this article not to affect certain future financial transactions

J. Taxes

1. §314: Taxes, taxes on real property
 - a. Applies to taxes/ assessments other than income tax
 - b. No sale/foreclosure for failure to pay taxes during military service unless court finds that military service does not materially affect ability to comply with obligations
 - c. If property sold/foreclosed by court order during military service, service member may commence action to redeem property within 6 months of termination of service
 - d. §315: Taxes; income taxes

K. Insurance

1. §316: Policies of insurance; policies not to lapse or be forfeited
2. No policy shall lapse due to nonpayment for period of military service and for 2 years thereafter;
3. §316-a Protection of assignor of life insurance policy; enforcement of storage liens
4. §316-b: Professional liability protection for certain persons ordered to active duty in armed forces

L. Employment

1. §317: Reemployment in Private Industry
 - a. Person employed in private industry entitled to reemployment (same position or like seniority) upon completion of military service within 90 of return if still qualified unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so.
 - b. Should employer fail to comply action may be brought in the Supreme Court in the County in which employer has place of business.
 - c. §318: Policy of the State
 - d. Policy against discrimination in employment based on military duty
 - e. Persons shall not request that rights under this provision be waived
 - f. Knowing violation of anti-discrimination clause shall result in misdemeanor

M. Other

1. §319: evasive transfer of interest
2. §321: Certificates of service
3. §322: Interlocutory Orders
4. §323: Further Relief
5. §323-a: Maximum rate of interest – 6% rule
6. §323-b: Filing fees waiver; civil actions
7. §324: Severability
8. §325: Inconsistent provisions in other acts

VI. New York State Human Rights Law (NYSHRL §290 – 301)

A. New York State Division of Human Rights: The New York State Division of Human Rights is charged with enforcing the New York State Human Rights Law. A complaint brought to the Division of Human Rights must be brought within one year of alleged discrimination. The Division of Human Rights must conduct an investigation and should it find probable cause will then bring the matter to an administrative public hearing before an administrative law judge.

1. Purpose (§290) - The New York State Legislature “finds and declares that the state has the responsibility to act to assure that every individual within this state is afforded an equal opportunity to enjoy a full and productive life and that the failure to provide such equal opportunity, whether because of discrimination, prejudice, intolerance or inadequate education, training, housing or health care not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants...”
2. Equality of Opportunity a Civil Right (§291)
 - a. “The opportunity to obtain employment without discrimination because of age, race, creed, color, national origin sexual orientation, military status, sex or marital status is hereby recognized as and declared to be a civil right.” (§291(1)).
 - b. “The opportunity to obtain education, the use of places of public accommodation and the ownership, use and occupancy of housing accommodations and commercial space without discrimination because of age, race, creed, color, national origin, sexual orientation, military status, sex, or marital status, as specified in §296 of this article, is hereby recognized as and declared to be a civil right.” (§291(2)).
3. Definitions (§292)
 - a. “Military Status” - “a person’s participation in the military service of the United States or the military service of the state, including by not limited to, the armed forces of the United States, the army national guard, the air national guard, the New York naval militia, the New York guard, and such additional forces as may be created by the federal or state government as authorized by law.” (§292(28)).
 - b. “Reserve armed forces” – “means service other than permanent full time service in the military forces of the United States including by not limited to service in the United States Army Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Air Force Reserve, or the United States Coast Guard Reserve.” (§292(29)).
4. Unlawful Discriminatory Practices (§296)
 - a. §296 enumerates the extent of actions or inactions which would constitute a discriminatory practice. In addition to employment decisions, provision includes provisions similar to that of the ADA regarding reasonable accommodations and “readily achievable” modifications. Provision extends to actions of occupancy(renting, leasing), ownership and use of commercial spaces.
 - b. §296-a: extends to issues of finance and credit
5. Remedies: Unlimited compensatory damages are available. The provisions of the statutes are to be interpreted liberally(§300)and may be utilized against persons outside the state so long as business is

conducted within the state. (§298-a). See *Hoffman v. Parade Publ'n*, 2009 NY Slip Op 3678 (N.Y. App. Div. May 7, 2009). (Age discrimination claim: plaintiff in case was a traveling salesman did not work or live in New York but was permitted to avail himself of New York State Statute because decision to fire him was made in New York office.)

VII. New York State Tax Considerations

A. Military Spouses Residency Relief Act (Public Law 111-97)

1. Amends the Servicemembers Civil Relief Act (SCRA); effective tax year 2009; see www.nystax.gov
2. Rules relating to the domicile or residence of a military spouse: Act provides certain tax relief for spouses of service members who are present in New York State solely to be with the service member when the service member is in that state in compliance with military orders.
3. A military spouse cannot lose or acquire residence or domicile in a state when the military spouse is located in New York simply to be with a service member who is present in compliance with military orders. (SCRA extended this protection previously to the service member and not the spouse).
4. A military spouse will not be treated as a resident of New York State for tax purposes (i.e. treated as non-resident) if the following conditions are met:
 - a. The military spouse is located in New York State solely to be with the service member and the service member is located in New York state in compliance with this or her military orders, and
 - b. The service member and his or her spouse were residents or domiciliaries in a state other than New York before being located in New York.
5. Non-resident status will not continue to apply if service member's permanent United States duty station is no longer New York State.
6. Pursuant to the Act, a military's spouse's income that is earned in NY will NOT be treated as New York source income and be exempt from personal income tax if the spouse is a nonresident of NY and is in NY solely to be with service member here in compliance with orders.
7. Income exemption extends to military spouse; it does not apply to non-military income earned in NY by service member.
8. For tax years commencing January 1, 2010 a military spouse who qualifies as a nonresident can present a properly completed Form IT-2104-E Certificate of Exemption from Withholding to his/her employer to claim exemption from withholding for New York State personal income tax.
9. For tax year 2009, if nonresident military spouse had New York State, New York City, or Yonkers personal income tax withheld from wages and wages or other compensation are now exempt pursuant to the Act, then tax payer must file Form IT-203 to claim a refund.

PART THREE

RESOURCES

Part One - Federal Provisions of Law

I. Procedure

Federal Rule of Civil Procedure 55-Defaults
Federal Rule of Civil Procedure 62 – Stay of Proceedings to Enforce Judgment
Federal Rule of Civil Procedure 32 – Using Depositions
Servicemembers Civil Relief Act 50 U.S.C. §§501-596
Supreme Court Rule Rule 40. Veterans, Seamen, and Military Cases
Conroy v. Aniskoff, 507 U.S. 511, 513-14, 113 S. Ct. 1562, 123 L. Ed.2d 229 (1993)
Mason v. Texaco, Inc., 862 F.2d 242, 244-45 (10th Cir.1988)
Smith v. Zuniga, 03-CA-881(NN), 2006 WL 1207685, *1 fn. 2 (W.D. Tx may 4, 2006)
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McFadden v. Shore, 60 F. Supp. 8 (E.D. Pa. 1945); Fed. R. Civ. P. 4.

II. Citizenship

Immigration and Nationality Act §204, 213,319, 322 & 328-329
U.S. Citizenship and Immigration Services: www.uscis.gov
Military Paves Path to Citizenship, Sumathi Reddy, Newsday Oct. 21, 2009
News Release, *USCIS Launches Toll-Free Military Help Line*, Aug. 13, 2007 available at <http://www.uscis.gov>
USCIS – Citizenship for Spouses and Children of Military Members available at <http://www.uscis.gov/portal/site/uscis/menuitem>

III. Family Law Considerations

Effects of Parents Military Service on Child Custody, ALR 6th 577
Uniformed Services Former Spouses' Protection Act 10 U.S.C. 1408
Family Law and the Servicemembers Civil Relief Act, Mark E. Sullivan available at <http://www.abanet.org/legalservices/downloads/lamp/scrafamlaw.pdf>
42 U.S.C. §659 (Garnishment)
Uniformed Services Former Spouses' Protection Act Bulletin Fact Sheet available at <http://www.dfas.mil/militarypay/garnishment/fsfact.html>
Family Medical Leave Act 29 U.S.C. §2612 <http://www.dol.gov>

IV. Voting Rights

Uniformed and Overseas Citizens Absentee Voting Act 42 U.S.C. §1973
New Law May Require D.C., Md. To Abandon Sept. Primary Dates, by Tim Craig, The Washington Post 12/19/2010 available at : <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/18/AR2010031805318.html>
Law Review 1013 , *Absentee Ballots MUST be Mailed 45 Days before Election*, Captain Samuel F. Wright, JAGC, USN (Ret.) available at <http://www.roa.org>
Servicemembers Civil Relief Act: 50 U.S.C. §595

V. Labor and Employment

Uniformed Services Employment and Reemployment Rights Act (USERRA) 38 U.S.C. §4301-4333
Family and Medical Leave Act 29 U.S.C. §2612
Consolidated Omnibus Budget Reconciliation Act (COBRA) 29 U.S.C. §1162
Internal Revenue Code §72, §401, §414, §3401
Americans with Disabilities Act (ADA) 42 U.S.C. §12101
ABA Section of Labor and Employment Law, *The Uniformed Services Employment and Reemployment Rights Act*, , Editors, Wood and Miazad, 2009
Cole v. Swint, 961 F. 2d 58 (5th Cir. 1992)
Erickson v. United States Postal Service, 571 F.3d 1364 (Fed. Cir. 2009)
Serricchio v. Wachovia Securities LLC, 2008 U.S.Dist. LEXIS 20043 (D.Conn. Mar. 14, 2008)

Law Review 1014, *11th Amendment Does Not Bar Suit against a State by the United States*, Captain Samuel F. Wright, JAGC, USN (Ret.) available at <http://www.roa.org>
Law Review 0724, *Congress Enacts New Legislation Precluding Statutes of Limitation in USERRA Cases*, Capt Samuel F. Wright, JAGC, USN (Ret.) available at <http://www.roa.org>
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Department of Labor: <http://www.dol.gov/vets>
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VI. American with Disabilities Act (ADA)

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The U.S. Equal Employment Opportunity Commission, *Veterans with Service-Connected Disabilities and The Americans with Disabilities Act (ADA): A Guide for Employers*, available at <http://www.eeoc.gov/facts/veterans-disabilities-employers.html>
U.S. Department of Justice, Civil Rights Division- Disability Rights Section, *ADA: Know Your Rights – Returning Servicemembers with Disabilities*, available at http://www.ada.gov/servicemembers_adainfo.html

VII. The Servicemembers Civil Relief Act (SCRA)

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The Army Lawyer, *Successful Criminal Prosecution of a Landlord Under the Servicemembers Civil Relief Act*, Major Michael Newman, Major Jack Jakubiak, Major Blaine Markuson, September 2008 available at http://www.loc.gov/r/frd/Military_Law/pdf/09-2008.pdf
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Beach v. Green Tree Servicing LLC, 2009 U.S. Dis. Lexis 51451, 2009 (Texas)
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VIII. Taxes and Finance

Internal Revenue Service Provisions see www.irs.gov
Internal Revenue Service Publication 3 “Armed Forces’ Tax Guide” available at <http://www.irs.gov/publications/p3/ar02.html>
Internal Revenue Service Publication 525 “Taxable and Nontaxable Income” available at <http://www.irs.gov/publications/p525/ar02.html>
Internal Revenue Service Publication 907 “Tax Highlights for Persons with Disabilities” available at <http://www.irs.gov/publications/p907/ar02.html>
Military Spouses Residency Relief Act (Public Law 111-97) available at <http://www.nystax.gov>
Internal Revenue Code §72, §401, §414, §3401
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VA Home Page: www.va.gov
Education Benefits: www.gibill.va.gov
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Burial and Memorial Services: www.cem.va.gov
Returning Service members: www.oefoif.va.gov
Home Loan Guaranty: www.homeloans.va.gov
Records: www.archives.gov/st-louis/military-personnel
VA Benefit Payment Rates: www.vba.va.gov/bln/21/rates
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Mental Health: www.mentalhealth.va.gov
Veterans Preference: www.opm.gov/veterans/index.asp
Employment Assistance: www.dol.gov/vets
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Life Insurance: www.insurance.va.gov
Department of Defense: www.defenselink.mil
Board of Veterans Appeal: www.va.gov/vbs/bva
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Part Two - New York State Provisions

I. Veterans

N.Y. Civ. Serv. Law §87 (public employment rights)
N.Y. Mil. Law §246 (retirement allowances)
N.Y. Soc. Serv. Law §171-173 (assistance and welfare programs)
Division of Veterans' Affairs: N.Y. Exec. Law §31; §351
New York State Veterans' Nursing Homes N.Y. Pub. Health Law §403; §2632
Real Property Tax Law §458- Property Tax Exemption
New York State Higher Education Services Corporation - www.hesc.org
Insurance Broker's License: N.Y. Ins. Law §2104
Birth, Death or Marriage Records: N.Y. Pub. Health Law §4173; N.Y. Dom. Rel. Law §19
Recording Certificates of Discharge: N.Y. Mil. Law §250
Free Use of Campsites: N.Y. Parks Rec. & Hist. Preserv. Law §13.19
N.Y. Transp. Law §103; 38 U.S.C. §3001-30
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Military Law §246: Leave of absence for public employees who are war veterans to continue study

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Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) - Domestic Relations Law §76

IV. Pensions and Retirement Systems

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V. New York State Soldiers' and Sailors' Civil Relief Act

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New York City Commission on Human Rights §8-101 available at <http://www.nyc.gov/html/cchr/html/ch1.html>
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VII. New York State Tax Considerations

Military Spouses Residency Relief Act (Public Law 111-97)
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