

Legal Rights of Illinois Service Members



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



LISA MADIGAN
ILLINOIS ATTORNEY GENERAL

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of
Illinois Service Members

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The contents of this book are not provided for purposes of giving legal advice to the reader. The contents are for informational purposes only, and the Office of the Illinois Attorney General does not assume responsibility for the accuracy or veracity of the reports or studies summarized herein, nor does this publication represent a legal opinion of the Office. The purpose of this publication is to summarize in one place some of the many legal rights affecting Illinois service members and veterans on a range of issues beyond federal and state veteran benefit laws. Cautionary messages, questions, legal cases, and pitfalls presented in this book are not the only legal issues to be considered. Reading this book is a good beginning to make the reader aware of some of the issues and areas of coverage, but the reader is strongly advised to seek professional legal counsel in regard to any specific application.

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

**Lisa Madigan
Attorney General**

Dear Illinois Service Member or Veteran:

Your dedication to serving our nation in the armed forces has earned you a number of rights and benefits. This first edition of the *Legal Rights of Illinois Service Members: A Summary of Laws Benefitting Illinois Military Service Members and Veterans* has been created to provide a general overview of the many legal protections, rights and benefits that may apply to you (other than federal and state veterans affairs benefits which my office covers in a separate publication, *Benefits for Illinois Veterans*).

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

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

The rights and benefits available to you and your dependents or survivors were won by you and past generations of veterans. As Attorney General, I am committed to working with the veterans of this state to guarantee that your rights and benefits are protected.

Sincerely,



**Lisa Madigan
Attorney General**

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Chapter 1: Employment Laws

A. Employment Protections for Military Members

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

General Concepts/Introduction

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

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

Definitions

Employer

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

Employee

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

¹ 38 U.S.C. § 4301 *et seq.*

² 38 U.S.C. § 4301(a).

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

⁴ 38 U.S.C. § 4312(d)(1)(C).

⁵ 20 C.F.R. §1002.44.

Uniformed Services

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

Interaction with Other Laws

USERRA sets the minimum protections, superseding inconsistent State law.⁹ States are free to grant additional benefits and protections, as "[n]othing in this chapter shall supersede, nullify or diminish any Federal or State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that establishes a right or benefit that is more beneficial to, or is in addition to, a right or benefit provided..." by USERRA.¹⁰ In a number of instances noted in this Chapter, Illinois has indeed established rights and benefits that are more beneficial in certain circumstances than those under USERRA. For example, USERRA covers employees who are in federal service, but not employees activated under state orders. However, the Service Members Employment Tenure Act¹¹ offers protections similar to USERRA for employees activated under state orders (see below).

Employee Notice Requirement

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

Reemployment Rights

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

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

⁶ 38 U.S.C. §§ 4303(13),(16).

⁷ *Id.*

⁸ *Id.*

⁹ 38 U.S.C. § 4302(b).

¹⁰ 38 U.S.C. § 4302(a).

¹¹ 330 ILCS 60/1 *et seq.*

¹² 38 U.S.C. §§ 4312(a)(1),(b).

¹³ 38 U.S.C. § 4312(a)(1).

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

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

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

Service-connected Injury or Illness

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

Untimely Reapplication Does Not Bar Reemployment

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

Reemployment Position

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

Benefits

Continuation of Benefits

Under USERRA, employers must provide returning employees their “seniority rights” (that is, the additional seniority, rights and benefits that they would have attained if they had been continuously

¹⁴ 38 U.S.C. §§ 4312(e)(1),(2).

¹⁵ 38 U.S.C. § 4312(e)(2)D).

¹⁶ 38 U.S.C. § 4313(a).

¹⁷ 20 C.F.R. § 1002.192.

employed).¹⁸ For instance, returning military personnel must be treated as if they had been continuously employed in calculating pension benefits, including determining when the employee qualifies for a pension and calculating the amount of the employee's monthly check. If, for example, an employee would have been eligible to participate in a company's pension plan during the employee's military leave, the company must place the employee in the plan retroactively to the date of initial eligibility. USERRA also contains detailed requirements for pension plans that require employee contributions.¹⁹

Vacation Benefits

Under USERRA, there is no general rule that returning employees have accrued paid vacation benefits while on military leave. Accrued vacation time is often considered to be a form of short-term compensation (i.e., a non-seniority right), rather than a perquisite of seniority. However, employers must provide vacation accrual to employees on military leave if the employer provides that benefit to similarly situated employees on comparable leaves of absence.²⁰ As such, a returning employee may not have a right to accrued paid vacation time during military service; however, vacation accrued prior to military service can be used upon return or even during deployment.²¹ While an active duty service member does not accrue paid vacation time, he does receive the benefit of additional seniority time, if the employer uses this method to determine the rate at which employees accrue vacation time.

There are instances where the reverse may also be true under USERRA. For example, if there is a collective bargaining agreement that applies.

Finally, even if the above exceptions do not apply, one should also consult state law. Particularly for those service members who have a public employer, Illinois law provides a number of rights and benefits above and beyond what is required under USERRA (see more below).

Protections for Service Members with Disabilities²²

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

Discharge Protection

In addition to requiring employers to reemploy military personnel, USERRA also limits the right to terminate the employment of returned service men and women. If an employee has served for more than 180 days, the employer can terminate that reemployed individual only for cause during the first

¹⁸ 38 U.S.C. §§ 4316(a),(b).

¹⁹ 38 U.S.C. § 4318.

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

²¹ 20 C.F.R. § 1002.153.

²² 38 U.S.C. § 4313(a)(3).

year of reemployment.²³ If the person's period of service was more than 30 days but less than 181 days, the employer can terminate the reemployed individual only for cause during the first 180 days of reemployment.²⁴

Discrimination and Retaliation Prohibited

USERRA also prohibits employers from discriminating against individuals based on their past, present or future military obligations.²⁵ USERRA protects covered employees from discrimination regarding initial employment, reemployment, retention, promotion and benefits.

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

- **Files Complaints:** Files a complaint under USERRA;
- **Bears Witness:** Testifies, assists or otherwise participates in an investigation or a proceeding under USERRA; or
- **Exercises Rights:** Exercises any right provided under USERRA.²⁶

The framework for analyzing USERRA claims is fundamentally different than Civil Rights violation (Title VII) claims.²⁷ USERRA's two-pronged burden-shifting analysis is markedly different from the four-pronged *McDonnell Douglas* framework burden-shifting analysis in Title VII actions.²⁸ In USERRA claims, the employee must show that the military service was a substantial or motivating factor in the adverse action.²⁹ On March 1, 2011, the U.S. Supreme Court held that if a supervisor, motivated by bias against the military, performs an action that the supervisor intends to cause an employee to be fired, and if that act actually causes the employee to be fired, the employee can sue the company for employment discrimination, even if the biased supervisor is not the final decision maker and even if the final decision maker is unbiased.³⁰

Once the employee shows that his or her military service was a substantial or motivating factor in the adverse action, the burden shifts to the employer to demonstrate that (1) the employer's stated reason is not a pretext and (2) that "the action would have been taken in the absence of [the employee's military] service."³¹ A leading case on this standard is *Velazquez-Garcia v. Horizon Lines of P.R.*³²

²³ 38 U.S.C. § 4316(c)(1).

²⁴ 38 U.S.C. § 4316(c)(2).

²⁵ 38 U.S.C. § 4311(a).

²⁶ 38 U.S.C. § 4311(b).

²⁷ Civil Rights Act of 1964 (Pub. L. 88-352).

²⁸ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) (holding that complainant in a trial under Title VII of the Civil Rights Act of 1964 must carry initial burden under the statute of establishing a *prima facie* case of racial discrimination and that may be done by showing (1) that he belongs to a racial minority; (2) that he applied and was qualified for a job for which the employer was seeking applicants; (3) that, despite his qualifications, he was rejected; and (4) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications. Civil Rights Act of 1964, § 701 *et seq.*

²⁹ *Maier v. City of Chicago*, 547 F.3d 817, 824 (7th Cir. 2008).

³⁰ *Staub v. Proctor Hospital*, 131 S. Ct. 1186 (2011).

³¹ 38 U.S.C. § 4311(c).

³² 474 F.3d 11 (1st Cir. 2007).

Education and Mediation

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

ESGR's Ombudsman Services Program provides information and mediation on issues related to USERRA. ESGR ombudsmen are volunteers located throughout the U.S. and U.S. territories. The Illinois ESGR office can be reached at 217-731-3971 or toll-free at 1-800-336-4590.

Enforcement

An employee may pursue his or her rights under USERRA by filing an administrative claim with the U.S. Department of Labor or by pursuing litigation through a private attorney.³³ The employee has the right to a jury trial and can recover actual damages for a violation of USERRA, including back pay, lost benefits and pension adjustments.³⁴ Other available remedies include reinstatement, correction of personnel files, provision of retroactive seniority and restored vacation. *Id.* In addition, a court can issue injunctive relief requiring an employer to comply with the law.³⁵ The court may impose double damages as liquidated damages for willful violations.³⁶

Statute of Limitations

Congress did not impose a limitations period for USERRA claims, and specifically disclaimed the applicability of state statutes of limitations.³⁷ However, the adverse party may argue that a claimant's unreasonable delay in bringing forth a USERRA claim has permanently damaged the adverse party's ability to assert a defense. Compare *McLain v. City of Somerville* (refusing to apply laches to bar a three-year-old USERRA claim)³⁸ with *Miller v. City of Indianapolis* (applying laches to bar a USERRA claim based on decades-old events where key witnesses had died or retired).³⁹

2. Service Member's Employment Tenure Act (330 ILCS 60/1 et seq.)

General Concepts/Introduction

The Service Member Employment Tenure Act (SMETA) is similar to USERRA, extending reemployment protections and relief from civil obligations to service members performing military duty under either federal or state orders.⁴⁰ The Act does not cover temporary employees.⁴¹

³³ 38 U.S.C. §§ 4322(a), 4323(a).

³⁴ 38 U.S.C. § 4323(d).

³⁵ 20 C.F.R. 1002.314.

³⁶ 38 U.S.C. § 4323(d)(1)(C).

³⁷ 38 U.S.C. § 4323(i).

³⁸ 424 F.Supp.2d 329, 337 (D. Mass. 2006).

³⁹ 281 F.3d 648, 653-54 (7th Cir. 2002).

⁴⁰ 330 ILCS 60/1, et seq.

⁴¹ 330 ILCS 60/7.

In order to qualify for the protections under SMETA the service member must have been discharged under Honorable conditions or satisfactorily completed his or her military service under the laws of the United States.⁴²

Definitions

Military Service

SMETA defines “military service” to include federal service or active duty with any branch of service – Army, Navy, Marine Corps, Air Force, Coast Guard – as well as training or education under the supervision of the United States preliminary to induction into the military service.⁴³ SMETA also defines “military service” to include any period of active duty with the state of Illinois pursuant to the orders of the President of the United States or the Governor of the State of Illinois. *Id.*

Employer

SMETA applies equally to public and private employers.⁴⁴ The Act defines public employers to include any unit of local government or school district.⁴⁵ The Act is silent as to coverage of home rule units of local government, which may allow modification of the Act by home rule authority.

Reemployment

Reporting Back to Work

A service member has 90 days after release from qualifying military service or after release from hospitalization continuing not more than one year after discharge.⁴⁶ This reporting back period is not graduated according to length of service, and is likely the result of legislative oversight – i.e., two-week state duty would not likely justify allowing 90 days to return to employment.

Reemployment to Same Position (State Escalator Principle)

The service member shall be restored to the position of employment which he or she left with the same increases in status, seniority and wages that were earned during his or her term of military service by employees in like positions who were on the job at the time such returning service member entered the service, or to a position of like seniority, status and pay, unless such employer’s circumstances have so changed as to make it impossible or unreasonable to do so.⁴⁷

Multiple Service Member Employees in Same Position

Employees shall, upon release from military service, be given preference in the matter of employment in the order in which they entered military service and the employer shall not be required to retain more

⁴² 330 ILCS 60/4.

⁴³ 330 ILCS 60/3.

⁴⁴ 330 ILCS 60/4.

⁴⁵ 330 ILCS 60/3.

⁴⁶ 330 ILCS 60/4.

⁴⁷ 330 ILCS 60/4.

than one of them in his or her employ.⁴⁸ What this means is that if a position of a service member is filled by another employee who in turn enters military service, the first employee is preferred for that position, and the employer need not retain the second employee. There is no authority discussing the interaction of this provision and USERRA.

Employment Protection and Benefits

The service member employee is not to be discharged from such position without cause for one year after such restoration.⁴⁹ A service member is treated as having been on furlough or leave of absence during the time of military service, without loss of seniority, and shall be entitled to participate in other benefits offered to other employees of comparable leave.⁵⁰ Health insurance is to be reinstated without delay upon return of the service member employee to work.

Enforcement

Individuals may enforce their rights under the Act by filing suit in court. A court may issue monetary and injunctive relief, together with reasonable attorney's fees and costs.⁵¹ In order to encourage private enforcement, the Act provides that "[n]o fees or court costs shall be taxed against any person applying for the benefits of this Act."⁵² Additionally, cases brought pursuant to the Act may, at the court's discretion, be given preference in terms of hearing and disposition over other matters then pending before the court.⁵³

An employer's knowing violation of the Act is a Class A misdemeanor with a mandatory minimum fine of not less than \$5,000 and not more than \$10,000.⁵⁴

Reporting Requirement

The Attorney General must establish and maintain a statewide list of employers who have been convicted of violating the Act. The Attorney General shall make the information in the list available to the public on its official website and by any other means the Attorney General deems appropriate.⁵⁵

3. Illinois National Guard Employment Rights Law (20 ILCS 1805/30.1 et seq.)

General Concepts/Introduction

The Illinois National Guard Employment Rights Law⁵⁶ is similar to USERRA, extending reemployment protections and relief from civil obligations to members of the National Guard serving under state active duty orders as well as certain training and duty orders under Title 32 of the United States Code.

⁴⁸ 330 ILCS 60/4.

⁴⁹ 330 ILCS 60/5.

⁵⁰ *Id.*

⁵¹ 330 ILCS 60/6(b).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ 330 ILCS 60/6(a).

⁵⁵ 330 ILCS 60/8.

Definitions

Employer

The Act applies equally to public and private employers.⁵⁷ The Act defines public employers to include any unit of local government or school district.⁵⁸ The Act is silent as to coverage of home rule units of local government, which may allow modification of the Act by home rule authority.

Eligibility

A National Guard member is entitled to reemployment rights provided that they: (1) give advance notice of service; (2) timely report back; and (3) serve in a manner characterized as honorable or otherwise characterized as satisfactory.⁵⁹ Advance notice is excused if precluded by military necessity.⁶⁰

Return to Work Period

The period of time in which a National Guard member has to return to work is determined by the length of service:⁶¹

- **1-30 days:** report to work on the “first regularly scheduled work period on the first full calendar day following completion of the period of State Active Duty and the expiration of 8 hours after a period allowing for safe transportation of the member from the place of that duty to the member’s residence.” Example: drill over at 5:00pm Sunday, 9:00pm return to residence, plus 8 hours = 5:00am Monday → report to work Monday.
- **31-180 days:** submit application for reemployment “not less than 14 days after completion of the period of State Active Duty.”
- **181 or more days:** submit application for reemployment “not later than 90 days after completion of the period of service.”

A National Guard member who fails to report or apply for reemployment “shall not automatically forfeit his or her rights..., but shall be subject to the conduct rules, established policy, and general practices of the employer pertaining to explanations and discipline with respect to absence from scheduled work.”⁶²

Protections

A National Guard member is to be considered as having been on furlough or leave of absence, and shall be entitled to be reemployed without loss of seniority.⁶³

⁵⁶ 20 ILCS 1805/30.1, *et seq.*

⁵⁷ 20 ILCS 1805/30.15.

⁵⁸ 20 ILCS 1805/30.10.

⁵⁹ 20 ILCS 1805/30.15(a)(1-3).

⁶⁰ 20 ILCS 1805/30.15(b).

⁶¹ 20 ILCS 1805/30.15(e).

⁶² 20 ILCS 1805/30.15(g).

⁶³ 20 ILCS 1805/30.20(a).

A few key protections are:

- **Escalator principle**⁶⁴
- **Reasonable accommodation**⁶⁵
- **Preference over employee that filled position during member's service**⁶⁶

Upon reemployment, a National Guard member “shall not be discharged from the position without cause within one year after reemployment.”⁶⁷ This discharge protection is not graduated according to length of service, and is likely the result of legislative oversight – i.e., weekend drill would not likely lead to one-year discharge for cause protection.

SMETA also includes two other provisions that concern matters not related to (re-)employment rights: stays of prosecution and tuition refund in certain cases. These provisions are addressed in Chapter 2.

4. Military Leave of Absence Act (5 ILCS 325/0.01 *et seq.*)

General Concepts/Introduction

The Military Leave of Absence Act⁶⁸ provides that public employers must grant leave to any full-time employee who is a member of any reserve component of the United States Armed Forces or the Illinois State Militia for any period actively spent in military service, including basic training, special or advanced training, annual training and any other required training or duty. In addition to granting leave, the Act requires employers to protect an employee's benefits and, in certain situations, to provide fully paid military leave for a relatively limited period of time (concurrent pay) and/or pay differential between the employee's regular compensation and military base pay.

Covered Employers

The Act applies to public employers, which are defined to include the State of Illinois and local government employers, including school districts.⁶⁹ The Act specifically states that a home rule unit of local government may not regulate its employees in a manner inconsistent with the Act.⁷⁰

Covered Employees

The Act extends protections to full-time employees of public employers, with the exception of independent contractors, serving in the reserve component of the United States Armed Forces or the Illinois State Militia.⁷¹ The phrase “any reserve component of the United States Armed Forces” encompasses National Guard units of other states, as well as the units of the State of Illinois. See 1991 Ill. Atty. Gen. Op. 36.

⁶⁴ 20 ILCS 1805/30.20(i).

⁶⁵ 20 ILCS 1805/30.20(i).

⁶⁶ 20 ILCS 1805/30.20(i).

⁶⁷ 20 ILCS 1805/30.20(a).

⁶⁸ 5 ILCS 325/0.01, *et seq.*

⁶⁹ 5 ILCS 325/1(a).

⁷⁰ 5 ILCS 325/1.1.

⁷¹ 5 ILCS 325/1(a).

Protections

Right to Leave of Absence with Benefits and without Loss of Seniority

The Act requires public employers to provide leave of absence “for any period actively spent in military service, including: (1) basic training; (2) special or advanced training, whether or not within the State, and whether or not voluntary; (3) annual training; and (4) any other training or duty required by the United States Armed Forces.”⁷² An employee’s seniority **and other benefits** “shall continue to accrue” during such period of leave.⁷³

Pay

Concurrent Pay

Annual Training. During leaves for annual training, an employee shall continue to receive his or her regular compensation without any offset of his or her military pay.⁷⁴ This means that a covered employee is allowed to receive both regular compensation from a public employer as well as military pay – a situation commonly referred to as “concurrent receipt.”

Pay Differential

Basic Training and Special or Advanced Training. During leaves for basic training, for up to 60 days of special or advanced training, and for **any other training or duty** required by the United States Armed Forces, an employee may be entitled to pay differential “if the employee’s compensation for military activities is less than his or her compensation as a public employee....”⁷⁵ If military compensation is less than the employee’s regular compensation, then the public employer must pay the difference between the employee’s regular compensation and his or her military **base** pay.⁷⁶

Active Duty. Full-time employees of the State of Illinois, with the exception of independent contractors, are also entitled to pay differential during the entire period of active duty military service.⁷⁷ The amount of the pay differential is generally based on the employee’s regular compensation minus an amount equal to his or her military active duty base pay.⁷⁸ The Act provides that “[t]he Department of Central Management Services (CMS) and the State Comptroller shall coordinate in the development of procedures for the implementation of this Section.”⁷⁹ However, as of the date of this publication, such procedures have not been issued by the Department of Central Management Services and the State Comptroller.

⁷² 5 ILCS 325/1(a)(1-4).

⁷³ 5 ILCS 325/1(a).

⁷⁴ 5 ILCS 325/1(a).

⁷⁵ 5 ILCS 325/1(a).

⁷⁶ 5 ILCS 325/1(a).

⁷⁷ 5 ILCS 325/1(b).

⁷⁸ *Id.*

⁷⁹ *Id.*

Enforcement

Individuals may enforce their rights under the Act by filing suit in court. Common law principles would likely control matters involving damages and attorneys' fees since the Act is silent with respect to enforcement. The Act does, however, provide that a violation also constitutes a civil rights violation under the Illinois Human Rights Act.⁸⁰ In appropriate cases where a complaint alleges a "pattern or practice" of such violations, the Office of the Illinois Attorney General has certain enforcement powers.

5. Public Employee Armed Services Rights Act (5 ILCS 330/1 *et seq.*)

General Concepts/Introduction

The Public Employee Armed Services Rights Act provides that the rights of public employees to insurance coverage, pension rights and employment and promotional rights shall be protected and preserved while the public employees are on active duty military status.⁸¹ The Act defines "public employee" as an employee of the state, a unit of local government or a school district. The Act defines units of local government to include home rule units of local government.⁸²

Protections

The Act protects insurance coverage, mandating automatic continuation immediately upon return to public employment.⁸³ The Act protects employment benefits that were conferred or that accrued during the period of the employee's military service.⁸⁴

The Act also provides for "any other right or benefit previously granted to or conferred upon public employees similarly situated to those public employees placed on active duty status and conferred during the period of active duty status."⁸⁵ There is no authority interpreting the meaning of this provision.

Penalties/Remedies

An employer's violation of the Act is a civil rights violation under the Illinois Human Rights Act.⁸⁶

⁸⁰ 5 ILCS 325/1.01 (referencing 775 ILCS 5/1-101 *et seq.*).

⁸¹ 5 ILCS 330/1 *et seq.*

⁸² 5 ILCS 330/6.

⁸³ 5 ILCS 330/5(a).

⁸⁴ 5 ILCS 330/5(b).

⁸⁵ 5 ILCS 330/5(c).

⁸⁶ 5 ILCS 330/6.

6. Local Government Employees Benefits Continuation Act (50 ILCS 140/1 *et seq.*)

General Concepts/Introduction

The Local Government Employees Benefits Continuation Act⁸⁷ requires local governmental employers to provide pay differential to employees who have been called to active military duty by order of the President of the United States. The Act defines units of local government to include home rule units of local government.⁸⁸

Pay Differential

Eligibility for Pay Differential

The Act extends protections to employees of units of local government called to active duty service in the United States Armed Services, including the National Guard, by order of the President of the United States.⁸⁹

Calculation of Pay Differential

The amount of pay differential due an employee is determined by taking the regular compensation the employee was receiving at the time of mobilization minus the amount of their *base* military pay.⁹⁰ In addition, the employee is entitled to continuation of “any health insurance and other benefits he is or was receiving or accruing at that time....”⁹¹

Payment must continue for the duration of their active military service. *Id.* If a collective bargaining agreement or employer policy is more generous than the Act, then the agreement or policy is controlling.⁹²

Exceptions to Compliance

The only exception to compliance with the Act is that local governmental employers need not provide pay differential when 20 percent or more of their employees are mobilized.⁹³

⁸⁷ 50 ILCS 140/1, *et seq.*

⁸⁸ 50 ILCS 140/3.

⁸⁹ 50 ILCS 140/2.

⁹⁰ 50 ILCS 140/2.

⁹¹ *Id.*

⁹² *Id.*

⁹³ 50 ILCS 140/2.

7. Municipal Employees Military Active Duty Act (50 ILCS 120/0.01 et seq.)

General Concepts/Introduction

The Municipal Employees Military Active Duty Act provides that municipalities must provide employees with leave for active duty service in the Armed Services and also provide reemployment rights upon return.⁹⁴ The Act has generally been superseded in effect by later, more generous federal and state laws. However, the Act grants discretion to municipal corporations to make direct contributions to employee pension funds on behalf of an active duty employee.⁹⁵

8. Administrative Regulation of Military Leave of State Employees Subject to the Personnel Code

Leaves of Absence for Military Duty

The Illinois Administrative Code provides further regulation on military leaves of state employees who are subject to the Personnel Code. The provision states:

Section 302.220 Veterans Continuous Service

- a) Leaves of absence shall be granted to all employees, except temporary or emergency employees, who leave their positions and enter military service for 5 years or less (exclusive of any additional service imposed pursuant to law). An employee shall be restored to the same or a similar position on making an application to his/her employing agency within 90 days after separation from active duty or from hospitalization or convalescence continuing after discharge for not more than two years. The employee must provide evidence of satisfactory completion of training and military service when making application and be qualified to perform the duties of the position.
- b) Subject to the provisions of Section 302.110, a veteran who returns to state service after having been granted a leave of absence from provisional status shall be permitted and required to pass the same or similar examination for his/her position within 90 days.
- c) Trainees who have not previously done so and whose training was interrupted by military leave shall be required to qualify in an examination in the trainee class before being granted allocation or non-competitive promotion to a higher class.⁹⁶

Leaves of Absence for Hospital Leave

The Illinois Administrative Code provides further regulation on leaves of absence for state employees who are subject to the Personnel Code in regard to “veterans hospital leave.” A veteran-employee shall receive four days of paid leave per year to visit a veterans’ hospital or clinic for examination of a military

⁹⁴ 50 ILCS 120/0.01, *et seq.*

⁹⁵ 50 ILCS 120/3.

⁹⁶ 80 Ill Admin. Code §302.220.

service-connected disability. The public employer shall not charge these four days against any sick leave the employee has currently accumulated.⁹⁷

B. Employment Protections for Military Families

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

General Concepts/Introduction

The Family Military Leave Act is designed to ensure that close family members of persons called to active military duty have an opportunity to spend time with their spouses or children before and during deployment without the risk of losing their jobs.⁹⁸ The Family Military Leave Act provides guaranteed unpaid leave for the employees of qualifying employers, with a protected right of return and protection of employment benefits during the leave.

Coverage

Covered Employers

The Act applies to both public and private employers, defining an employer as “any person, partnership, corporation, association or other business entity,” including “the State of Illinois, municipalities and other units of local government.”⁹⁹ Only employers with 15 or more employees are required to extend leave.¹⁰⁰

Covered Employees

Family military leave under the Act is available to a qualifying employee who is the spouse or parent, child or grandparent of a person called to federal or state military service lasting longer than 30 days.¹⁰¹ The Act applies to employees, as well as independent contractors, who have worked at least 12 months for the employer and have worked at least 1,250 hours in the 12 month period preceding the commencement of the leave.¹⁰²

Length of Leave and Notice to Employer

The employer must provide up to 15 days if it employs between 15 and 50 persons and up to 30 days if it employs more than 50 persons.¹⁰³ An employee or independent contractor must give at least 14 days

⁹⁷ 20 ILCS 415/8b.20; 80 Ill. Admin Code §303.115.

⁹⁸ 820 ILCS 151/1, *et seq.*

⁹⁹ 820 ILCS 151/5.

¹⁰⁰ 820 ILCS 151/10(a, b).

¹⁰¹ 820 ILCS 151/5.

¹⁰² 820 ILCS 151/5.

¹⁰³ 820 ILCS 151/10(a,b).

notice prior to the date the leave will commence if the leave will consist of 5 or more consecutive work days, or as much notice as is practicable if the leave is for less than 5 consecutive days.¹⁰⁴ When possible, the employee or independent contractor should consult with the employer to minimize disruption to the employer's operations.

The employer may require certification from the proper military authority to verify the employee or independent contractor's eligibility for the leave.¹⁰⁵

Exhaustion of Other Leave

An employee is not to take unpaid leave under the Act unless he or she has exhausted all accrued vacation, personal, compensatory and other leaves – with the exception of sick and/or disability leave.¹⁰⁶

Coordination with the Family and Medical Leave Act

Leave granted under the Act may consist of unpaid leave. However, rights under the Act may not exceed the protection afforded under the Federal Family Medical Leave Act (FMLA). Therefore, the Act provides that if an employee also uses leave under FMLA because of a qualifying exigency arising out of the fact that the employee's spouse or child is called to active duty, the amount of leave available under the Act will be reduced by the number of days the employee takes under FMLA.¹⁰⁷

Protections

Employees exercising their rights under the Act "shall be entitled to be restored...to the position held by the employee when the leave commenced" or to an equivalent position.¹⁰⁸ An equivalent position is one with essentially similar seniority status, employee benefits, pay and other terms and conditions of employment.¹⁰⁹

Employers must allow for employees (and independent contractors, if appropriate) to maintain benefits at the employee's expense for the duration of the leave and may negotiate maintenance of benefits at the employer's expense.¹¹⁰

Prohibited Acts

Employers are prohibited from interfering with or restraining an eligible employee's request for leave and cannot take any adverse job action against an employee who exercises his or her rights under the

¹⁰⁴ 820 ILCS 151/10(c).

¹⁰⁵ 820 ILCS 151/10(c).

¹⁰⁶ 820 ILCS 151/10(d).

¹⁰⁷ An eligible employee shall be entitled to a total of 12 work weeks of leave during any 12-month period due to any qualifying exigency (as the Secretary shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. 26 U.S.C. § 102 a(1)(E).

¹⁰⁸ 820 ILCS 151/15(a).

¹⁰⁹ *Id.*

¹¹⁰ 820 ILCS 151/15(b).

Act. Employers are also prohibited from retaliating against any employee who opposes any practice made unlawful by the Act.¹¹¹

Enforcement

Individuals may enforce their rights under the Act by filing suit in court. State courts have jurisdiction to enjoin unlawful practices and/or retaliatory actions that violate the Act and may order “equitable relief that is necessary and appropriate to redress [such] violations or to enforce the Act.”¹¹²

C. Preference in Hiring and Promotion

1. Federal Veterans’ Preference Law

General Concepts/Introduction

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

Eligibility

To qualify for preference, the veteran must have been discharged or released from active duty in the armed forces under honorable conditions. This means that the veteran must have been discharged under an honorable or general discharge.

Retired members of the armed forces are not included in the definition of preference eligible unless the retired member is a disabled veteran or the member retired below the rank of major or its equivalent.

Preference Eligible

The two types of preference eligibility are disabled (10 point preference eligible) and non-disabled (5 point preference eligible).

Veterans are eligible for 5 preference points if the veteran’s active duty service meets any of the following:

- 180 or more consecutive days, any part of which occurred during the period beginning September 11, 2001 and ending on a future date prescribed by presidential proclamation or law as the last date of Operation Iraqi Freedom, **OR**
- Between August 2, 1990 and January 2, 1992, **OR**

¹¹¹ 820 ILCS 151/25.

¹¹² 820 ILCS 151/30.

- 80 or more consecutive days, any part of which occurred after January 31, 1955 and before October 15, 1976.
- Service in a war, campaign or expedition for which a campaign badge has been authorized or between April 28, 1952 and July 1, 1955.

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

- has a service connected disability, **OR**
- has received a Purple Heart.

Preference Groups

Preference eligibles are divided into four basic groups as follows:

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

Ranking Systems

Numerical Ranking System

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

Non-numerical Ranking System

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

Application

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

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

2. Illinois Veterans' Preference Laws

General Concepts/Introduction

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

Preference in State Employment: The Illinois Personnel Code

The Illinois legislature has codified a veterans hiring preference.¹¹³ The Personnel Code grants preference to veterans in entrance examinations for state employment, but does not grant veterans promotional preference. The Personnel Code applies to “[a]ll offices and positions of employment in the service of the State of Illinois. . . unless exempted in this or any other Act.”¹¹⁴ Preference is given in the form of points added to the final grade of veterans who otherwise qualify for the position and are entitled to appear on the list of those eligible for appointment to the position.¹¹⁵

Definitions

A veteran is defined as an individual who was a member of the armed forces of the United States or who, while a citizen of the United States, was a member of the armed forces of allies of the United States in a time of hostilities with a foreign country. Veterans are given preference only if they are found to possess the business capacity necessary for the proper discharge of the duties of the employment position sought.

Process of Determining Preference

Veterans seeking a preference shall provide documentation or execute any consents or other documents required by the respective agency to enable the department or agency to verify that the person is entitled to the preference.¹¹⁶ Acceptable documentation includes a Release from Active Duty Department of Defense Form, Form DD214, or other evidence of honorable discharge.¹¹⁷

The department or agency director determines the order of persons entitled to a preference on eligible lists on the basis of their augmented ratings.¹¹⁸ According to the Illinois Supreme Court, state departments or agencies are required to do the following under the Personnel Code:

- **Position Classification Plan:** Establish a position classification plan for all positions governed by the Personnel Code;¹¹⁹

¹¹³ 20 ILCS 415/8b.7.

¹¹⁴ 20 ILCS 415/4.

¹¹⁵ 20 ILCS 415/8b.7(b).

¹¹⁶ 20 ILCS 415/8b.7(j).

¹¹⁷ 20 ILCS 415/8b.7(k).

¹¹⁸ 20 ILCS 415/8b.7(f).

¹¹⁹ 20 ILCS 415/8a.

- **Removal of Unqualified Candidates:** Eliminate those who are not qualified for entrance into state service;¹²⁰
- **Evaluate Relative Fitness:** Discover the relative fitness of those who are qualified;¹²¹ and
- **Establish Priority Lists:** Establish lists of names of candidates in order of their relative excellence in respective examinations.¹²²

Ratings Methods

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

Categorical Method

When the director of an agency establishes eligible lists on the basis of category ratings such as “superior,” “excellent,” “well-qualified” and “qualified,” the eligible veterans in each such category shall be preferred for appointment before the eligible nonveterans in the same category.¹²³ The Personnel Code mandates that agencies that use categorical ratings must not merely give an advantage to veterans, but appoint veterans over nonveterans in the same category.¹²⁴

Numerical Method

Agencies that use numerical lists may consider for appointment the three highest applicants on a list.¹²⁵ Veterans are not granted an absolute preference when numerical ranking is used.¹²⁶

Preference Points

Veterans and certain other persons qualifying based on relationship to a veteran receive preference points in varying amounts based on the nature of military service. A surviving unremarried spouse of a veteran who suffered a service-connected death or disability that disqualifies the veteran from civil service employment shall be entitled to the same preference to which the veteran would have been entitled.¹²⁷

¹²⁰ 20 ILCS 415/8b.1.

¹²¹ *Id.*

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

¹²³ 20 ILCS 415/8b.7(f).

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

¹²⁵ 20 ILCS 415/8b.5.

¹²⁶ *Denton v. Civil Service Commission of State of Illinois*, 679 N.E.2d 1234, 1238 (1997).

¹²⁷ 20 ILCS 415/8b.7(h).

10 Points

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

- an honorably discharged veteran with a service-connected disability certified by the U.S. Department of Veterans Affairs;¹²⁸
- an honorably discharged veteran of an allied country with a service-connected disability;¹²⁹
- a veteran who is a Purple Heart recipient;¹³⁰
- a parent of an unmarried veteran who suffered a service-connected death or service-connected disability that disqualifies the veteran from civil service employment (credit is given to the first parent who applies);¹³¹
- a surviving spouse or civil union partner, who has not subsequently married or entered into a civil union, of a veteran who suffered a service connected death;¹³² **OR**
- the spouse or civil union partner of a veteran who suffered a service connected disability that prevents the veteran from qualifying for civil service employment.¹³³

5 Points

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

- served for a total of at least six months;
- served for the duration of the hostilities regardless of the length of the engagement;
- was discharged on the basis of hardship; or
- was released from active duty due to a service-connected disability and was discharged under honorable conditions.¹³⁴

3 Points

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

- the individual served a total of at least six months and was discharged under honorable conditions; or
- the individual was released from active duty with a service-connected disability certified by the U.S. Department of Veterans Affairs.¹³⁵

¹²⁸ 20 ILCS 415/8b.7(c).

¹²⁹ *id.*

¹³⁰ *id.*

¹³¹ 20 ILCS 415/8b.7(i)

¹³² 80 Ill. Admin Code §302.30(e).

¹³³ 80 Ill. Admin Code §302.30(e).

¹³⁴ 20 ILCS 415/8b.7(d).

¹³⁵ 20 ILCS 415/8b.7(e).

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

A veteran who returns from active military service not exceeding four years shall be restored to an eligible list for the same class. The veteran must make this request within 90 days after discharge or from hospitalization continuing after discharge for not more than one year. The veteran who is eligible must provide (1) proof of satisfactory completion of training and service; and (2) be qualified to perform the current duties of the class.¹³⁶

Enforcement

Complaints under the Personnel Code are first decided by the Civil Service Commission, which has the authority to direct compliance with the Personnel Code.¹³⁷ The Commission may make declaratory rulings as to material questions involving the applicability and interpretation of the Personnel Code, the personnel rules of the Department of Central Management Services, or any order or final decision of the Commission.

Preference in State Employment – Other Constitutional Officers

Employment positions in state government with constitutional officers other than the governor are exempt from the provisions of the Personnel Code.¹³⁸ Veterans' preference with other State of Illinois constitutional officers exists only if granted by that office. The Secretary of State Merit Employment Code gives hiring preference to veterans applying for positions with the Secretary of State.¹³⁹ The State Treasurer Employment Code gives preference to veterans applying for positions with the Office of the State Treasurer.¹⁴⁰ The Comptroller Merit Employment Code gives preference to veterans applying for positions with the Office of the Comptroller.¹⁴¹ The State Universities Civil Service Act gives preference in entrance examinations to veterans applying for positions with the State University System.¹⁴² The Illinois Procurement Code encourages the chief procurement officers to encourage prospective vendors to consider hiring qualified veterans and to notify them of any available financial incentives or other advantages associated with hiring such persons.¹⁴³

¹³⁶ 80 Ill. Admin Code §302.140(b).

¹³⁷ *Denton v. Civil Service Commission of State of Illinois*, 176 Ill.2d 144, 679 N.E.2d 1234, 1238, 223 Ill.Dec. 461 (1997); 20 ILCS 415/10(9); 80 Ill. Admin. Code §1.80(a).

¹³⁸ 20 ILCS 415/4c(2).

¹³⁹ 15 ILCS 310/10b.7.

¹⁴⁰ 15 ILCS 510/9b.5.

¹⁴¹ 15 ILCS 410/10b.7.

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

¹⁴³ 30 ILCS 500/45-67.

Preference in Public Works Contracts¹⁴⁴

In the employment and appointment to fill positions in the construction, addition to or alteration of all public works undertaken or contracted for by the state, Illinois gives preference to veterans of the U.S. Armed Forces or to those who served as members of the U.S. Armed Forces and served under one or more of the following conditions:

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

Enforcement

Any person who knowingly and willfully violates the provisions of this Act is guilty of a petty offense and shall be fined not less than \$75, nor more than \$300, for each offense.¹⁴⁵

Preference in Municipal Employment: The Illinois Municipal Code

Veterans' Preference for Civil Service Employment in Municipalities¹⁴⁶

Persons engaged in the active military or naval service of the U.S. for a period of at least one year who were honorably discharged will receive 5 preference points and shall be preferred for appointment to civil offices, positions and places of employment in the classified service of any municipality that has appointed a civil service commission pursuant the Illinois Municipal Code.¹⁴⁷ A municipality organized as a home rule unit of local government may enact an ordinance superseding the veterans' preference provisions of the Illinois Municipal Code.¹⁴⁸ By way of example, the City of Champaign has enacted an ordinance granting veterans preference only to entrance examination and not promotion.¹⁴⁹

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

If otherwise qualified for a position, veterans are given preference over non-veterans for hiring in civil offices, positions and places of employment of any municipality that has appointed a civil service commission. This preference is given by adding points to the final grade average that the veteran

¹⁴⁴ 330 ILCS 55/0.01.

¹⁴⁵ 330 ILCS 55/3.

¹⁴⁶ 65 ILCS 5/10-1-1.

¹⁴⁷ 65 ILCS 5/10-1-16.

¹⁴⁸ *See, e.g., Paglini v. Police Bd. of City of Chicago*, 335 N.E.2d 480 (1975).

¹⁴⁹ Champaign Mun. Code 2-503 (c,d).

receives on a municipal entrance examination.¹⁵⁰ Five points will be added to the original entrance examination score received by any veteran on an eligibility list who was engaged in the active military or naval service of the United States for a period of at least one year and received an honorable discharge.¹⁵¹

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

Points will be added to the final grade average on any promotional examination taken by individuals whose names appear on the promotional-eligible registers of a municipality.¹⁵² Eligible veterans will receive as the result of any promotional examination seven-tenths of one point for each six months or fraction thereof of active military or naval service, not exceeding 30 months.¹⁵³ No person shall receive the preference for a promotional appointment granted by the Municipal Code after he or she has received one promotion from an eligible list on which the individual was allowed such preference.

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

Individuals who were engaged in U.S. military service for a period of at least one year of active duty and who were honorably discharged, or who are now or have been members on inactive or reserve duty in such military or naval service,¹⁵⁴ will receive 5 preference points and be preferred for appointment¹⁵⁵ to offices, positions and places of employment in the fire and police departments of any municipality that has appointed a board of fire and police commissioners.¹⁵⁶ These provisions do not apply to municipalities organized as home rule units of local government.¹⁵⁷

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

If otherwise qualified for a position, veterans are given preference over non-veterans for hiring in civil offices, positions and places of employment in the fire and police departments of any municipality that has appointed a board of fire and police commissioners. This preference is given by adding points to the grade average that the veteran receives on an original entrance examination.¹⁵⁸ Five points will be added to the original entrance examination score received by any veteran on an eligibility list who was engaged in the active U.S. military or naval service for a period of at least one year and received an honorable discharge.¹⁵⁹

¹⁵⁰ 65 ILCS 5/10-1-16.

¹⁵¹ *Herbert v. Board of Fire and Police Com'rs of City of Rolling Meadows*, 97 Ill.App.3d 1138 (1st Dist. 1981).

¹⁵² 65 ILCS 5/10-1-16.

¹⁵³ *Id.*

¹⁵⁴ 65 ILCS 5/10-2.1-8.

¹⁵⁵ 65 ILCS 5/10-2.1-9(a).

¹⁵⁶ Municipalities that have appointed a board of fire and police commissioners instead of a civil service commission. 65 ILCS 5/10-2.1-1; 65 ILCS 5/10-2.1-27.

¹⁵⁷ 65 ILCS 5/10-2.1-8.

¹⁵⁸ 65 ILCS 5/10-1-16.

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

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

Veterans who were engaged in U.S. military service for a period of at least one year of active duty and who were honorably discharged, or who are now or have been members on inactive or reserve duty in such military or naval service, and whose name appears on a promotional eligibility register will be preferred for promotion over non-veterans.¹⁶⁰

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

The board of fire and police commissioners will give preference points to the final grade average on any promotional examination taken by eligible veterans whose names appear on the promotional-eligible registers of a municipality that has appointed a board of fire and police commissioners.¹⁶¹ Eligible veterans will receive as the result of any promotional examination seven-tenths of one point for each six months or fraction thereof of active military or naval service, not exceeding 30 months. No person shall receive the preference for a promotional appointment granted by the board of fire and police commissioners after he or she has received one promotion from an eligible list on which the individual was allowed such preference.

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

In general, applicants for a position in either the fire or police department of a municipality must be under 35 years of age. However, with respect to a **police department**, a veteran may exceed the maximum age provision by the number of years served on active military duty, but by no more than 10 years of active military duty.¹⁶²

Fire Department Promotion Act¹⁶³

The Fire Department Promotion Act gives promotional preference to veterans serving a fire department operated by a municipality with a population of less than 1,000,000.¹⁶⁴ A person on a preliminary promotion list who is eligible for a veteran's preference under any law or agreement applicable to an affected department may file a written application for that preference within 10 days after the initial posting of the preliminary promotion list. The veteran's preference shall be calculated as provided in the applicable law and added to the applicant's total score on the preliminary promotion list. Any person who has received promotional preference under this Act or any other law will not be eligible for any subsequent veterans' preference under this Act.¹⁶⁵

¹⁶⁰ 65 ILCS 5/10-2.1-10.

¹⁶¹ 65 ILCS 5/10-2.1-11.

¹⁶² 65 ILCS 5/10-2.1-6(a).

¹⁶³ 50 ILCS 742/1.

¹⁶⁴ 50 ILCS 742/5.

¹⁶⁵ 50 ILCS 742/55.

3. Preference in Cook County¹⁶⁶

Entrance Examinations

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

Promotional Examinations

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

4. Preference in Fire Protection Districts¹⁶⁷

Individuals who were engaged in U.S. military service for a period of at least one year of active duty and who were honorably discharged, or who are now or have been members on inactive or reserve duty in such military or naval service, will receive 5 preference points and be preferred for appointment to offices, positions and places of employment in a fire department of a fire protection district.¹⁶⁸ Employees of a fire department of any fire protection district who were engaged in active military service during World War II and the Korean Conflict, and who were honorably discharged, or who are now or have been members on inactive or reserve duty in such military or naval service, and whose name appears on existing promotional eligibility registers will be preferred for promotional appointments of the fire department in such fire protection district.¹⁶⁹

5. Preference in Illinois Park Districts¹⁷⁰

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

The Civil Service Board will give preference points to the final grade average on any promotional examination taken by eligible veterans whose names appear on the promotional-eligible registers. Eligible veterans will receive as the result of any promotional examination seven-tenths of one point for each six months or fraction thereof of active military or naval service, not exceeding 30 months. No

¹⁶⁶ 55 ILCS 5/3-14021.

¹⁶⁷ Fire Protection District Act, 70 ILCS 705/ 00.1 *et seq.*

¹⁶⁸ 70 ILCS 705/16.08a(a).

¹⁶⁹ 70 ILCS 705/16.08a(c).

¹⁷⁰ Park District Civil Service Act, 70 ILCS 1210/29a.

person shall receive the preference for a promotional appointment granted by the Park System Civil Service Act after he or she has received one promotion from an eligible list on which the individual was allowed such preference.

D. Unemployment Compensation

1. Unemployment Compensation for Former Service Members

A service member separating from active duty may qualify for unemployment compensation if unable to find a new job. The Unemployment Compensation for Ex-servicemembers (UCX) program provides for the payment of unemployment compensation to eligible ex-service members separated from the military service.¹⁷¹ The UCX regulations for the purpose of providing unemployment compensation to ex-service members are codified at 20 C.F.R. § 614.

A former service member is eligible to receive unemployment compensation if they completed a full term of active service in the armed forces and their discharge or release is, at a minimum, under honorable conditions.¹⁷² A former service member discharged or released prior to completing their first full term of active service can still be eligible to receive unemployment compensation if they were separated (a) for the convenience of the government under an early release program; (b) because of medical disqualification, pregnancy, parenthood or service-incurred injury or disability; (c) because of hardship; and (d) because of personality disorder or inaptitude, but only if the service was continuous for 365 days or more.¹⁷³

For benefit purposes, a former service member's wages are determined on the basis of their pay grade on separation, using a schedule issued by the Department of Labor which specifies the applicable remuneration for each pay grade.¹⁷⁴ The receipt of certain educational benefits under chapter 35 of Title 38 of the United States Code will affect eligibility for unemployment compensation.¹⁷⁵

The administration of the UCX program is handled by the states as agents of the federal government through agreements with the Secretary of the Department Labor.¹⁷⁶ A former service member can apply for UCX benefits in the state in which they are searching for employment, and receipt of benefits can be provided by only that state.¹⁷⁷

Since administration of the UCX program is handled by the states, the claims of former service members are subject to the same eligibility and disqualification provisions as other individuals claiming benefits under the state's unemployment insurance law, including rights to hearing and appeal.¹⁷⁸ To apply for unemployment compensation, a former service member must bring a Certificate of Release or Discharge

¹⁷¹ 5 U.S.C. §§ 8521-8523.

¹⁷² 5 U.S.C. § 8521(a)(1)(A-B); 20 C.F.R. § 614.2(g)(1-2).

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

¹⁷⁴ 5 U.S.C. § 8521(a)(2).

¹⁷⁵ 5 U.S.C. § 8525.

¹⁷⁶ See 5 U.S.C. § 8502.

¹⁷⁷ See 5 U.S.C. § 8504; 20 C.F.R. § 614.8.

¹⁷⁸ See 20 C.F.R. § 614.7.

from Active Duty (DD Form 214), a Social Security Card and a civilian and military job history or résumé. Additional information on this benefit is available on the website of the Illinois Department of Employment Security, <http://www.ides.illinois.gov/page.aspx?item=843>.

2. Unemployment Compensation for Military Spouses

As a general rule, unemployment compensation is not available to individuals who have left employment voluntarily without good cause.¹⁷⁹ Military spouses are often faced with having to leave employment to follow a spouse who was reassigned duty station. That choice cannot be labeled wholly voluntary. Relatively few states have explicit provisions which accurately regard military spouses' loss of employment upon transfer as involuntary, but Illinois is one such state.

The Military Family Interstate Compact Implementation Statute Drafting Advisory Committee Act, Public Act 95-736 (July 16, 2008), amended the Unemployment Insurance Act to provide that an individual is not ineligible for unemployment if they voluntarily leave employment to accompany a reassigned military spouse.¹⁸⁰ The amendment to the Unemployment Insurance Act provides that "[t]he provisions of this Section shall not apply to an individual who has left work voluntarily: ... [b]ecause the individual left employment to accompany a spouse who has been reassigned from one military assignment to another."¹⁸¹ Additionally, an employer's account shall not be charged for any benefits paid out to the individual who leaves to accompany a spouse reassigned from one military assignment to another.¹⁸²

¹⁷⁹ See 820 ILCS 405/601(A).

¹⁸⁰ 820 ILCS 405/601(B)(7).

¹⁸¹ *Id.*

¹⁸² *Id.*

Chapter 2: Consumer Laws

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

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

A. Servicemembers Civil Relief Act [SCRA]

1. General Concepts/Introduction

The federal Servicemembers Civil Relief Act [SCRA] is designed to protect active duty military members, reservists who are in active federal service, and National Guardsmen who are in active federal service. Some of the benefits under the SCRA extend to dependents of active duty military members as well. The purpose of the SCRA is to “protect those who have been obliged to drop their own affairs to take up the burdens of the nation.”¹⁸³ “Although the Act should be read liberally and afford generous protection to the service member, the protection does have its limits.”¹⁸⁴

2. Organization of SCRA

The organization of the SCRA, codified at 50 U.S.C. app. §§ 501-596, is provided below:

- Title I
 - General Provisions (§§511-519)
 - Persons protected (§§511, 513)
 - Non-discrimination provision (§518)
- Title II
 - General Relief (§§521-527)

¹⁸³ *Boone v. Lightner*, 319 U.S. 561, 575 (1943).

¹⁸⁴ *Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948).

- Default judgments and stays (§§521, 522, 524, 525)
- Statutes of Limitation (§526)
- Maximum rate of interest (§527)
- Title III (§§531-538)
 - Major substantive protections against evictions, termination of installment contracts, foreclosure on mortgages and termination of leases by lessees, protection to dependents
- Title IV
 - Life Insurance (§§541-549)
- Title V
 - Taxes and Public Lands (§§561-571)
- Title VI
 - Administrative Remedies (§§581-583)
- Title VII
 - Further Relief (§§591-596)

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

3. Interest Rates Capped at 6%

Under the SCRA, a service member can cap the interest rate at 6% for all obligations entered into before beginning active duty if the military service *materially affects* his or her ability to meet the obligations. This can include interest rates on credit cards, mortgages,¹⁸⁵ and student loans, including Federal guaranteed student loans,¹⁸⁶ to name a few.

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

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

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

¹⁸⁵ Creditors must cap interest rates on mortgages originated prior to military duty during the period of military service and **1 year thereafter**. 50 App. U.S.C. §527.

¹⁸⁶ See the Higher Education Act, 20 U.S.C. §1078(d), which states that no provision of any federal or state law that limits the interest rate on a loan (**except for 50 U.S.C. app. §527**) will apply to loans made under a government student loan program.

4. Stay of Proceedings

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

5. Protection from Entry of Default Judgments

A default judgment is entered against a party who has failed to defend against a claim that has been brought by another party. To obtain a default judgment, a plaintiff must file an affidavit (a signed, written declaration of fact sworn to under oath) stating that the defendant is not in the military service and has not requested a stay. If a service member is sued while on active duty and fails to respond, and, as a result, a default judgment is obtained, the service member can reopen the default judgment by taking several steps. First, the service member must show that the judgment was entered during military service or within 30 days after service. Second, the service member must write to the court requesting that the default judgment be reopened while still on active duty or within 90 days of leaving the service. Third, the service member must not have made any kind of appearance in court, through filing an answer or otherwise, prior to the default judgment being entered. Finally, the service member must indicate that military service prejudiced the ability to defend the case and show that a valid defense to the action exists.

6. Automobile Lease Terminations

The SCRA allows service members to terminate pre-service automobile leases if they are called up for military service of 180 days or longer. Service member who sign automobile leases while on active-duty may be able to terminate an automobile lease if they are given orders for a permanent change of station outside the continental United States or to deploy with a military unit for a period of 180 days or longer.

7. Tolling of Statutes of Limitation

The SCRA provides that the period of a person's military service cannot be counted against them in computing the period of limitations for the bringing of any civil legal action or proceeding.¹⁸⁷ A service member should note here that this SCRA provision is a double-edged sword. Although the provision allows them to file civil legal actions later, the same period of active duty military service is excluded in computing the period of limitations provided for the bringing of any civil legal action or proceeding against a member of the armed forces as well.

It is important to note that the protection of the SCRA "... applies to any judicial or administrative proceeding commenced in any court or agency in any jurisdiction subject to this Act."¹⁸⁸ The language of the SCRA defines the term "court" to specifically include "any political subdivision of a State," which would include a county, municipality, city, town, township, or other special district created pursuant to

¹⁸⁷ 50 App. U.S.C. §526.

¹⁸⁸ 50 U.S.C. app. § 512(b) (emphasis added).

State law.¹⁸⁹ Accordingly, the SCRA protections apply with as much force to federal and state court proceedings as to proceedings of units of local government, including among others, zoning board hearings, property tax assessment hearings, and building code review hearings.

8. Housing Protections

Introduction

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

6% interest rate¹⁹⁰

As mentioned in section 3 above, the SCRA requires creditors to forgive interest in excess of 6 percent per year on any obligation or liability, incurred by a service member **prior to entry into military service**. The SCRA provides that the reduced interest rate of 6 percent will apply during the period of military service and **one year thereafter** for credit obligations secured by a mortgage, trust deed, or other security in the **nature of a mortgage**.

Stay of Proceedings and Adjustment of Mortgage Obligation¹⁹¹

In the event a service member's ability to pay a mortgage obligation **originated before the period of military service** is materially affected by military service, the SCRA permits a court to stay the proceedings or reduce the monthly payments and extend the length of time the service member has to pay the mortgage. This provision applies up to **nine months** after the end of military service.¹⁹²

Foreclosure Protections¹⁹³

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

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

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

¹⁸⁹ 50 U.S.C. App. §511(5).

¹⁹⁰ 50 App. U.S.C. §527.

¹⁹¹ 50 App. U.S.C. §533(b).

¹⁹² Pursuant to S. 4508, which passed on December 22, 2010, the nine month period of protection expires on

December 31, 2012.

¹⁹³ 50 App. U.S.C. §533(c).

Eviction Protections¹⁹⁴

For a service member leasing a house or apartment with rent below a certain amount, the SCRA can protect him or her from eviction for a period of time, usually three months. The dwelling-place must be occupied by either the active duty member or his or her dependents, and the rent on the premises cannot exceed an amount that is published annually in the *Federal Register* by the Department of Defense.¹⁹⁵

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

Residential Lease Terminations¹⁹⁶

The SCRA also allows service members who are just entering active duty service to lawfully terminate a lease without repercussions. To do this, the service member needs to show that the lease was entered into prior to the commencement of active duty service, or that the service member executed the lease while in military service but subsequently received orders for a permanent change of station (PCS) or for a deployment of at least 90 days.

To terminate a lease, the service member must provide written notice to the landlord along with a copy of the military orders. The termination of a lease that provides for monthly payment of rent will occur 30 days after the first date on which the next rental payment is due and payable after the landlord receives proper written notice.

9. Enhanced Mortgage Protections Pursuant to the Mortgage Servicing Agreement

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

- (1) Servicers must comply with the SCRA. Servicers must have a consultant review all known military foreclosures from January 1, 2009 to December 31, 2010, and provide monetary damages in compliance with the DOJ consent agreements with Countrywide¹⁹⁷ and Saxon Mortgage Services.¹⁹⁸

¹⁹⁴ 50 App. U.S.C. §531.

¹⁹⁵ The CPI-adjusted maximum rental rate for 2011 is \$2,975.54.

¹⁹⁶ 50 App. U.S.C. §535.

¹⁹⁷ See BAC/Countrywide Consent Order.

¹⁹⁸ See Saxon Consent Order, 3:11-cv-111-F (USDC TX-ND), filed May 26, 2011.

- (2) Servicers must determine whether their service member borrowers are eligible for SCRA protections.
- (3) Servicers must check the DMDC to determine whether their borrowers are serving on active military duty at the following times:
 - before referring a loan for foreclosure;
 - within seven days before a foreclosure sale; and
 - before the last point before a foreclosure becomes irreversible.
- (4) When invoking their rights under the SCRA, service members may provide their servicer with either military orders or a letter on official letterhead from the service member's commanding officer to demonstrate proof of active duty service.
- (5) Servicers must notify service member borrowers who are 45 days delinquent the following:
 - they may be entitled to certain SCRA protections regarding the service member's interest rate and the risk of foreclosure; and
 - counseling for covered service members is available at agencies such as Military OneSource, Armed Forces Legal Assistance (AFLA), and a HUD-certified housing counselor.
- (6) Servicers may not sell, foreclose, or seize the property of a service member borrower for defaulting on a mortgage obligation during or within nine months after, the period in which the service member is serving at a location more than 750 miles from the location of the secured property or outside of the United States and is eligible for Hostile Fire/Imminent Danger Pay.
 - Service members are protected under this provision regardless of whether the mortgage obligation was originated before or during the period of military service.
- (7) Servicers may not require service member borrowers to be delinquent to qualify for a short sale, loan modification, or other loss mitigation relief if the service member is experiencing financial hardship and is otherwise eligible for such loss mitigation due to a Permanent Change of Service (PCS).
- (8) Servicers may not make inaccurate reports to credit reporting agencies when a service member, who has not defaulted before relocating pursuant to a PCS, obtains a short sale, loan modification, or other loss mitigation relief.

B. Illinois Patriot Plan

1. General Concepts/Introduction

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

2. Definitions (in use before the SMCRA)

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

The Illinois Patriot Plan provides qualified service members with the following consumer protections which continue to exist even after the recent passage of the SMCRA.

3. Military Personnel Cellular Phone Contract Termination Act

The Military Personnel Cellular Phone Contract Termination Act, created by the Illinois Patriot Plan, allows service members on active duty or their spouses to terminate phone contracts without penalty.¹⁹⁹ The phone contract must have been entered into on or after August 22, 2005, and it must have been executed by or on behalf of the service member who is deployed on active duty.²⁰⁰

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

- **Notice of Termination by Certified Mail:** The service member must give notice to the cellular telephone company of the service member’s intention to terminate the cellular phone contract by certified mail, return receipt requested;
- **Copy of Military Orders:** The service member must provide the company with a copy of the military or gubernatorial orders calling the service member to active duty and of any orders further extending the service member’s period of active duty; and
- **Return (or Written Promise To Return) of Unowned Cell Phone:** The service member must return the cellular phone to the company if the phone is not owned by the activated service member or agrees in writing to return the cellular phone as soon as practical after the deployment is completed.²⁰¹

4. Illinois Municipal Code and Public Utilities Act

Under the Public Utilities Act, no company or electric cooperative may stop gas or electricity from entering the residential premises of which a service member was a primary occupant immediately before the service member was deployed on active duty for nonpayment for gas or electricity supplied to the residential premises.²⁰² Similarly, under the Municipal Code, where utility service is supplied by a municipality, no municipality may stop gas or electricity from entering the residential premises of which

¹⁹⁹ 815 ILCS 633/1, *et seq.*

²⁰⁰ 815 ILCS 633/10.

²⁰¹ 815 ILCS 633/15.

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

a service member was a primary occupant immediately before the service member was deployed on active duty for nonpayment for gas or electricity supplied to the residential premises.²⁰³

To be eligible, the service member must provide the municipality, utility company, or electric cooperative with a copy of the consumer's military or gubernatorial orders either calling the consumer to active duty or further extending the consumer's period of active duty.²⁰⁴

If the consumer has incurred any arrearages while the service member is serving on active duty, the company must allow the consumer a period of time equal to that of the consumer's active duty service to pay the arrearage upon the service member's return. The company must notify the consumer that if paying the arrearage presents a hardship, the consumer may request a longer period of time. If the arrearage is owed to a public utility company, the consumer may make a request to the Illinois Commerce Commission for assistance in obtaining a longer period.²⁰⁵ The public utility company or electric cooperative shall not charge the consumer late payment fees or interest during the period of deployment or the repayment period.²⁰⁶

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

Under the SMCRA (discussed more in detail below), the provision regarding non-municipal public utilities, like those concerning municipal public utilities, noted above, updates the Patriot Plan law's basic military terminology.²⁰⁷ It also updates the provisions with, the term "military service" and the requirement of 29 days of consecutive service proof of which (i.e., a copy of the orders) must be provided to the utility.²⁰⁸

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

5. Illinois Insurance Code

The Illinois Patriot Plan amended the Illinois Insurance Code to forbid forfeiture of life insurance policies for nonpayment of premiums.²⁰⁹ The amendment provides that an individual life insurance policy insuring the life of a service member shall not lapse or be forfeited for the nonpayment of premiums

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

²⁰⁴ 65 ILCS 5/11-117-12.2 (d); 220 ILCS 8-201.5(c).

²⁰⁵ 65 ILCS 5/11-117-12.2(c); 220 ILCS 5/8-201.5(d).

²⁰⁶ 220 ILCS 5/8-201.5(d).

²⁰⁷ See also 220 ILCS 5/8-206(l)(Provision stops a public utility from turning off a service member's or veteran's electricity or gas between December 1 and March 31 due to non-payment.).

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

²⁰⁹ 215 ILCS 5/224.05.

during the service member's period of military service or during the two-year period subsequent to the end of that service.²¹⁰

To be eligible for this treatment, a service member's life insurance policy must have been in force for at least 180 days, and have been brought within the Servicemembers Civil Relief Act, 50 U.S.C. app. §501, *et seq.* (containing rules for the mandatory reinstatement of lapsed life insurance).²¹¹

The insured service member must provide the life insurance company with a copy of the insured's military or gubernatorial orders either calling the insured to active duty or further extending the insured's period of active duty.²¹²

This provision does not apply to policies that have lapsed before the service member was deployed, nor does it limit a life insurance company's enforcement of provisions in the insured's policy relating to naval or military service in time of war.²¹³

6. Eviction Proceedings under the Code of Civil Procedure

The Illinois Patriot Plan added new §9-107.10 to the Code of Civil Procedure to allow courts to delay eviction proceedings for 90 days and to adjust rental obligations.²¹⁴ The new section provides that in an action for possession of residential premises of a tenant or mobile home park resident who is a service member deployed on active duty or of any member of the service member's immediate family who resides with him or her, the court may stay the proceedings for a period of 90 days or adjust the rental obligation to preserve the parties' interests.²¹⁵

To be eligible under this section, the service member or a member of his or her family who resides with the service member must provide the landlord or mobile home park operator with a copy of the tenant's or resident's military or gubernatorial orders either calling the service member to active duty or further extending the service member's period of active duty.²¹⁶

7. Interest Act

The Illinois Patriot Plan amended the Interest Act to prevent creditors from charging interest exceeding six percent annually.²¹⁷ Section 4.05 provides that no creditor in connection with an obligation entered into on or after August 22, 2005, shall charge or collect from a service member who is deployed on active duty, or the spouse of that service member, interest or finance charges exceeding six percent per annum during the period that the service member is deployed on active duty.²¹⁸ Interest or finance

²¹⁰ 215 ILCS 5/224.05(c).

²¹¹ 215 ILCS 5/224.05(a).

²¹² 215 ILCS 5/224.05(d).

²¹³ 215 ILCS 5/224.05(b), 5/224.05(e).

²¹⁴ 735 ILCS 5/9-107.10.

²¹⁵ 735 ILCS 5/9-107.10(b).

²¹⁶ 735 ILCS 5/9-107.10(c).

²¹⁷ 815 ILCS 205/4.05.

²¹⁸ 815 ILCS 205/4.05(b).

charges, including service and renewal charges, in excess of six percent per annum that otherwise would be incurred but for the prohibition in this Act are forgiven.²¹⁹

The amount of any periodic payment due from a deployed service member or the service member's spouse under the terms of the obligation shall be reduced by the amount of the interest and finance charges forgiven that is allocable to the period for which the periodic payment is made.²²⁰

To be eligible, the service member or spouse must provide the creditor with written notice and a copy of the military or gubernatorial orders calling the service member to active duty or further extending the service member's period of active duty no later than 180 days after release from active duty.²²¹

Creditors may be relieved from this rule if, in the opinion of the court, the service member's payment is not materially affected by the service member's active duty.²²²

This interest limitation applies to any retail installment sales contract, other contract for the purchase of goods or services, or bond, bill, note, or other instrument of writing for the payment of money arising out of a contract or other transaction for the purchase of goods or services.²²³

8. Motor Vehicle Leasing Act

The Illinois Patriot Plan amended the Motor Vehicle Leasing Act to allow service members to terminate their motor vehicle leases without penalty.²²⁴ The Act provides that any service member who is deployed on active duty for a period of not less than 180 days, or the spouse of that service member, may terminate any motor vehicle lease entered into on or after August 22, 2005, and executed by or on behalf of the service member who is deployed on active duty.²²⁵ "Motor vehicle" means "any automobile, car minivan, passenger van, sport utility vehicle, pickup truck, or other self-propelled vehicle not operated or driven on fixed rails or track."²²⁶

The lease is effectively terminated when notice of termination is delivered to the lessor along with a copy of the lessee's military or gubernatorial orders either calling the lessee to active duty or further extending the lessee's period of active duty. The lessee must return the leased vehicle not later than 15 days after delivery of the written notice.²²⁷

Lease amounts unpaid for the period preceding the effective date of the lease's termination shall be paid on a prorated basis.²²⁸ The lessor may not impose an early termination fee, but the service member must pay all other reasonable charges under the terms of the lease. Id. The lessor must refund

²¹⁹ 815 ILCS 205/4.05(c).

²²⁰ 815 ILCS 205/4.05(d).

²²¹ 815 ILCS 205/4.05(e).

²²² 815 ILCS 205/4.05(g).

²²³ 815 ILCS 205/4.05(a).

²²⁴ 815 ILCS 636/37.

²²⁵ 815 ILCS 636/37(b).

²²⁶ 815 ILCS 636/37(a).

²²⁷ 815 ILCS 636/37(c).

²²⁸ 815 ILCS 636/37(d).

to the lessee lease amounts paid in advance for a period after the effective date of the lease's termination within 30 days after the effective date of the lease's termination.²²⁹

C. Illinois Service Members Civil Relief Act (SMCRA)

1. Passage of the New Act

On August 9, 2012, the Governor signed into law the first major revision of Illinois consumer law designed to protect service members and their families since the passage of the Illinois Patriot Plan. This law, Public Act 97-0913, creates the Illinois Service Members Civil Relief Act (SMCRA), effective January 1, 2013.²³⁰ A breakdown of the new statute's structure and content follows.

2. New Definitions

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

Service Member

The SMCRA defines "service member" as "a resident of Illinois who is a member of any component of the U.S. Armed Forces or the National Guard of any state, the District of Columbia, a commonwealth, or a territory of the United States."²³¹

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

Military Service

The other key definition in the SMCRA is "military service." "'Military service' means any full-time training or duty, no matter how described under federal or State law, for which a service member is

²²⁹ 815 ILCS 636 37(e).

²³⁰ 330 ILCS 63/1, *et seq.*

²³¹ 330 ILCS 63/10.

ordered to report by the President, Governor of a state, commonwealth, or territory of the United States, or other appropriate military authority.”²³²

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

3. References to Existing Patriot Plan Law

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

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

4. References to Existing Law Outside the Patriot Plan

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

Stay of Prosecution

During the period of military service plus 14 days after a period of military service in excess of 29 days, a court having jurisdiction over the enforcement or any civil obligation or liability, the prosecution of any civil suit or proceeding, or the entry or enforcement of any civil order, writ, judgment, or decree may stay, postpone, or suspend the matter if the court finds that the member’s “failure to meet the obligation is the direct result of that period of military service.”²³³

Tuition Refund

Ability to obtain refund of school tuition if unable to attend for a period of seven days or more as a result of service. Withdrawal from the course shall not impact upon the service member’s final grade point average. If any service member, who has been enrolled in any Illinois public university, college, or community college, is unable to process his or her enrollment for the upcoming term, he or she will have late penalties and or charges set aside, including late processing fees for books, lab fees, and all items that were not in place because the service member was engaged in military service and was unable to enroll in the courses at the appropriate time.²³⁴

²³² 330 ILCS 63/10.

²³³ 20 ILCS 1805/30.25.

²³⁴ 20 ILCS 1805/30.30.

A violation of the sections pertaining to stay of prosecution and tuition refund constitutes a civil rights violation under the Illinois Human Rights Act. All proceeds from the collection of any civil penalty imposed under these sections will be deposited into the Illinois Military Family Relief Fund.²³⁵

5. New Rights Under the SMCRA

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

Stay of Contested Administrative Law Proceedings

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

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

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

Administrative Deadline Extensions

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

²³⁵ 20 ILCS 1805/30.25.

Right to Reschedule Exams Missed Due to Military Service

The SMCRA amends the Servicemember's Employment Tenure Act (SMETA) with the addition of new text that provides for the right to reschedule an exam at any "institution of higher learning," a defined term under the Illinois Higher Education Student Assistance Act, when a service member is called away to military service.²³⁶ This right applies to a wider set of institutions than the existing right to a refund of tuition from any Illinois public university, college or community college, under certain circumstances due to military service.

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

Relief from Default Judgments

Section 940 of the SMCRA amends the Code of Civil Procedure to provide service members a right to relief from default judgments under certain conditions.²³⁷ After thirty days from the entry by default of a final order or judgment against a service member who has entered military service, that service member may file a petition for relief from and vacation of that default judgment or order. Such a procedure allows a service member to undo the default that would likely not have occurred but for his or her military service, and have the opportunity to defend the action on its merits. There are four basic eligibility criteria:

1. **No Prior Appearance:** A service member must not have appeared in the case;
2. **Material Affect:** The service member's military service must have *materially affected* his or her ability to defend the case;
3. **Meritorious or Legal Defense:** The service member must have a meritorious or legal defense to the action; and
4. **Filing of Petition within 90 Days from Release:** The service member must file the petition, supported by affidavit ("or other appropriate showing") for relief within ninety (90) days after release from active duty [REFRAD]. (The 90-day deadline does not count any time where the service member was under legal disability or duress or any time where this basis for relief has been fraudulently concealed.)

Relief from Mortgage Foreclosure Proceedings

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

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

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

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

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

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

Right to Terminate Lease

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

In the first case, a service member has a right to terminate such a lease if he or she signed the lease *before* entry into military service for a period over twenty-nine (29) consecutive days.

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

In both cases, the service member must provide the landlord or mobile park operator with a copy of the military orders.

The effective date of the termination is thirty (30) days after service or, if the rent is paid monthly, 30 days after the next monthly rent payment is due.

Relief Concerning Retail Installment Contract Defaults

Section 965 of adds a new section to the Retail Installment Sales Act.²³⁸ This provision provides certain protections to service members called to military service who entered into a retail installment sales contract before entering such service. If the service member’s ability to pay the retail installment sales contract has been materially affected by the military service and a copy of the relevant orders documenting military service over twenty-nine (29) consecutive days is provided, he or she may petition for relief in court. A Court, in its turn, may do any of the following:

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

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

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

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

1. General Concepts/Introduction

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

2. Service Member Residential Property Act

Introduction

Several years after the passage of the Illinois Patriot Plan, but before the passage of the new SMCRA, P.A. 96-1400 created The Service Member Residential Property Act, effective July 29, 2010.²³⁹ Like the new provision of the SMCRA, this Act concerns termination of service members’ residential property leases under certain conditions. The reader is advised to seek legal counsel in determining the applicability of either or both of these laws.

²³⁹ 330 ILCS 62/5-1, *et seq.*

Definitions

Military Service

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

Service Member

“Service member” is defined as follows: “‘Service member’ means and includes the following persons and no others: All members of the Army of the United States, the United States Navy, the Marine Corps, the Air Force, the Coast Guard and all members of the State Militia called into the service or training of the United States of America or of this State.”²⁴⁰

Type of Property Covered

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

Right To Terminate Residential Property Lease

The Act, similar to the newer provision in the SMCRA, provides coverage in two basic scenarios. First, the Act allows for lease termination in the case where, the service member (or somebody on behalf of the service member) signs the lease, and then he or she is called to active duty. Second, in the case where the service member is already in military service (and has signed a lease while in service), he or she may terminate the lease in either of the two following cases: (1) he or she receives military orders for a “permanent change of station” (a PCS move); or (2) he or she receives military orders to deploy with a unit or as an individual in support of a military operation, for a period of not less than 90 days.²⁴¹

Timing of Termination

The lessee on such a lease as described above may end the lease any time after either of two dates: (1) the date the lessee entered into military service; or (2) the date of the lessee’s military orders.

The service member must provide written notice of termination and a copy of his or her orders to the lessor.²⁴²

²⁴⁰ 330 ILCS 62/5-5.

²⁴¹ 330 ILCS 62/5-10(2).

²⁴² 330 ILCS 62/5-20(b).

The effective date of the termination is thirty (30) days after service or, if the rent is paid monthly, 30 days after the next monthly rent payment is due. For all other leases, termination is effective on the last day of the month following the month which the notice is delivered.²⁴³

Attorneys Fees

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

3. No Shut-Off of Service Member's Gas Heating During Cold Season

Service Members' Gas Heating Protected During Cold Season: Stops service members and veterans from having their electricity or gas turned off due to non-payment between December 1 and March 31. History: P.A. 95-331, eff. 8-21-07; 95-876, eff. 8-21-08.

²⁴³ 330 ILCS 62/5-20(c).

Chapter 3: Litigating Against Active Duty Service Members

A. Overview of SCRA Default Judgment Protections

1. Affidavit Required in Seeking Default Judgment

Before any default may be taken, the Servicemembers Civil Relief Act (SCRA)²⁴⁴ requires the plaintiff to sign and file an affidavit with the court or agency stating whether or not the defendant is in active duty military service, or whether the plaintiff is unable to determine the military status of defendant. The affidavit should be made contemporaneously with filing of the motion for default judgment, and, out of an abundance of caution, the defendant's military status should be rechecked prior to entry of default judgment.

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

2. Reach of SCRA: Courts and Agencies

It is important to note that the protection of the SCRA "... applies to any judicial or administrative proceeding commenced in any court or agency in any jurisdiction subject to this Act."²⁴⁵ The language of the law defines the term "court" to specifically include "any political subdivision of a State," which would include a county, municipality, city, town, township, or other special district created pursuant to State law.²⁴⁶ Accordingly, the SCRA protections apply with as much force to federal and state court proceedings as to proceedings of units of local government, including among others, zoning board hearings, property tax assessment hearings and building code review hearings. The Illinois Supreme Court aptly stated that the provisions of the SCRA "must be regarded as written into our own statutes ... and, in effect, amending such statutes"²⁴⁷

²⁴⁴ 50 U.S.C. app. §521(b).

²⁴⁵ 50 U.S.C. app. §512(b) (emphasis added).

²⁴⁶ 50 U.S.C. app. §511(5).

²⁴⁷ *Illinois Nat. Bank of Springfield v. Gwinn*, 390 Ill. 345, 354 (Ill.1945).

3. Definition of Judgment

“The term ‘judgment’ means any judgment, decree, order, or ruling, final or temporary.”²⁴⁸ It does not refer solely to a final judgment on the merits for the claim or claims for relief involved in the lawsuit.

B. How to Comply

1. Statement of Military Service

The SCRA states that either party or the court may apply to the Department of Defense (DOD) for information on whether a person is in the armed forces. The DOD must issue a statement as to military service.²⁴⁹ The office in DOD to contact is the Defense Manpower Data Center (DMDC).

2. Servicemembers Civil Relief Act (SCRA) Website

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

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

3. Required Information

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

4. Obtaining a Report via the Website

Complete the following steps to execute a report:

- Choose **Single Record** Request under *Select a Request* on the Home Page and click the “**submit**” button.
- Once the **Single Record Request** screen appears, complete the required fields, and then click on the “**LookUp**” button.

²⁴⁸ 50 U.S.C. app. §511(9).

²⁴⁹ 50 U.S.C. app. §582.

- Once the request has been processed, the website will provide a SCRA Certificate reporting the active duty status “**Status Report**” for the individual, in PDF format.

5. Status Report

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

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

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

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

6. Obtaining a Report via Mail or Facsimile

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

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

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

C. Why Compliance is Important

A default judgment rendered without SCRA compliance is voidable. The SCRA allows a service member who has not received notice of the proceeding to seek the vacation or setting aside of a default

judgment.²⁵⁰ The service member must apply for reopening the judgment while on active duty or within 90 days thereafter, and establish that, at the time the judgment was rendered, he was prejudiced in his ability to defend himself due to military service.²⁵¹ Further, the service member must show that there is a meritorious or legal defense to the initial claim.²⁵² Default judgments will not be set aside when a litigant's position lacks merit, and this requirement avoids a waste of effort and resources in opening default judgments in cases where service members have no defense to assert.

Further, the failure to comply with the military affidavit requirement of the SCRA could result in a misdemeanor or fine. Submitting a false affidavit can subject the filer to misdemeanor prosecution; the maximum punishment is one year's imprisonment, a fine of \$1,000 or both.²⁵³

D. Situations Where Defendant is Not in Military Service

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

E. Situations Where Defendant is in Military Service

The purpose of Section 521 is to prevent default judgments from being entered against members of the armed services in circumstances where they might be unable to appear and defend themselves.²⁵⁴ If the plaintiff's affidavit indicates that the defendant is in active duty military service, then the court or agency may not enter a default judgment until it has first appointed an attorney to represent the defendant's interests.²⁵⁵

The role of the appointed attorney is to protect the interests of the absent service member. By way of example, the appointed attorney might attempt to contact the absent service member in order to seek application for a stay of proceedings. It is important to note that if the appointed attorney is unable to contact the service member, the actions of the attorney do not waive any defense of the service member or in any way bind him or her.²⁵⁶

Upon request of the appointed attorney, the court or agency must grant a stay for at least 90 days if there may be a defense which cannot be presented in the absence of the service member, or the

²⁵⁰ 50 App. U.S.C. § 521(g).

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ 50 App. U.S.C. § 521(c).

²⁵⁴ See *Roqueplot v. Roqueplot*, 88 Ill.App.3d 59, 410 N.E.2d 441 (2d Dist. 1980).

²⁵⁵ 50 App. U.S.C. § 521(b)(2).

²⁵⁶ *Id.*

attorney has been unable to contact the service member to determine the existence of a defense.²⁵⁷ Alternatively, the court or agency may enter a stay *sua sponte* if it determines there is a defense to the action that cannot be presented without the presence of the defendant or if after due diligence counsel has been unable to contact the defendant or otherwise determine whether a meritorious defense exists.²⁵⁸

After appointment of an attorney and the expiration of a stay period (if any) the court or agency may proceed to enter default judgment.²⁵⁹ The failure of the court or agency to appoint an attorney for an absent service member renders a resultant default judgment merely voidable, and not void.²⁶⁰

F. Situations Where Unable to Determine Military Service of Defendant

If based upon the affidavits filed in the proceeding, the court or agency is unable to determine whether the defendant is in military service, then the court or agency may require the plaintiff to file a bond in an amount approved by the court or agency before entering judgment.²⁶¹ If the defendant is later found to be in military service, then the bond is available to indemnify the defendant against any loss or damage suffered by reason of any judgment subsequently set aside in whole or in part.²⁶² The bond is to remain in effect until expiration of the time to appeal under applicable law.²⁶³

G. Sample Affidavit and SCRA Website Report

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

²⁵⁷ 50 App. U.S.C. § 521(d).

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *See, e.g., Hawkins, v. Hawkins*, 999 S.W.2d 171 (Tex. App. Austin 1999).

²⁶¹ 50 App. U.S.C. § 521(b)(3).

²⁶² *Id.*

²⁶³ *Id.*

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS

Plaintiff

John F. Costello, Jr.

Defendant



No. 08 CH 00000

AFFIDAVIT AS TO MILITARY SERVICE

Jane Q. Doe, Assistant Attorney General, on oath states:

With respect to defendant John F. Costello, Jr., individually and d/b/a JFC Construction,

(the defendant is) (the defendant is not) (I am unable to determine whether the defendant is)

in the military service of the United States.

This affidavit is based on these facts:

To comply with notice requirements in the Servicemembers Civil Relief Act, I searched for Mr. Costello in the Department of Defense Manpower Data Center (DMDC). On its website, www.dmdc.osd.mil/scra/owa/home, the DMDC states that it "maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems." The DMDC also states that it has "issued hundreds of thousands of 'does not possess any information indicating that the individual is currently on active duty' responses, and has experienced a small error rate."

According to the DMDC, Mr. Costello is not an active member of the military services.

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

Atty. No.: 99000
Name: Jane Q. Doe, Assistant Attorney General
Atty. for: Plaintiff
Address: 100 W Randolph Street, 12th Floor
City/State/Zip: Chicago, IL 60601
Telephone: (312) 814-6594

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS



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

Last Name: WHITE
 First Name: AKEELA
 Middle Name: MAISHA
 Active Duty Status As Of: Nov-07-2012

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

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

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

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

Mary M. Snavelly-Dixon

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

Chapter 4: Other Military/Veterans Laws

A. Civil Rights

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

General Concepts/Introduction

The Illinois Human Rights Act was amended on August 4, 1993, making it unlawful to discriminate against an individual because of their military status in connection with employment, real estate transactions, access to financial credit, and the availability of public accommodations. "It is the public policy of this State ... [t]o secure for all individuals within Illinois the freedom from discrimination against any individual because of his or her ... military status ... or unfavorable discharge from military service in connection with employment, real estate transactions, access to financial credit, and the availability of public accommodations."²⁶⁴

Definitions

Military Status

Means a person's status on active duty in or status as a veteran of the armed forces of the United States, status as a current member or veteran of any reserve component of the armed forces of the United States, including the United States Army Reserve, United States Marine Corps Reserve, United States Navy Reserve, United States Air Force Reserve, and United States Coast Guard Reserve, or status as a current member or veteran of the Illinois Army National Guard or Illinois Air National Guard.²⁶⁵

Unfavorable Military Discharge

Includes discharges from the armed forces of the United States, their Reserve components or any National Guard or Naval Militia which are classified as RE-3 or the equivalent thereof, but does not include those characterized as RE-4 or "Dishonorable."²⁶⁶

Violations of Various Statutes

Over time, the Illinois Human Rights Act has been amended to make violations of the following statutes a violation of the Illinois Human Rights Act.²⁶⁷

- Military Leave of Absence Act

²⁶⁴ 775 ILCS 5/1-102(A).

²⁶⁵ 775 ILCS 5/1-103(J-1).

²⁶⁶ 775 ILCS 5/1-103(P).

²⁶⁷ 775 ILCS 5/6-102.

- Public Employee Armed Services Rights Act
- Section 11-117-12.2 of the Illinois Municipal Code
- Section 224.05 of the Illinois Insurance Code
- Section 8-201.5 of the Public Utilities Act
- Section 2-1401.1, 9-107.10, 9-107.11, and 15-1501.6
- Section 9-107.10 of the Code of Civil Procedure
- Section 4.05 of the Interest Act
- The Military Personnel Cellular Phone Contract Termination Act
- Section 405-272 of the Civil Administrative Code of Illinois
- Section 10-63 of the Illinois Administrative Procedure Act
- Sections 30.25 and 30.30 of the Military Code of Illinois
- Section 16 of the Landlord and Tenant Act
- Section 26.5 of the Retail Installment Sales Act
- Section 37 of the Motor Vehicle Leasing Act

Filing a Complaint with the Illinois Department of Human Rights

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

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

B. Family Law

1. Child Custody & Visitation

Family Care Plan A Factor in Best Interests of Child Determinations

In determination of the best interest of the child, the Court shall, among other things, consider the terms of a parent's military family-care plan that a parent must complete before deployment if a parent is a member of the United States Armed Forces who is being deployed.²⁶⁸

²⁶⁸ 750 ILCS 5/602(a)(10).

Custody and Visitation Hearings Regarding Deploying Service Members

Effective June 1, 2012, P.A. 97-659 further amended the Illinois Marriage and Dissolution of Marriage Act by providing the following provisions concerning deploying parents:

- 1. Temporary Orders (Based on Deployment):** Amends 750 ILCS 5/603 regarding temporary orders in a custody/modification of custody proceeding to allow for temporary orders to be issued under the provisions of new subsection (f) of 750 ILCS 5/610. 5/610 discusses temporary orders as a result of deployment(s) and limits modification of custody or visitation rights to temporary orders during deployment periods. The order must specify that the basis for the temporary order is deployment and shall include the following provisions:
 - a. Custody and Visitation for Leaves:** If in the child’s best interest, custody or reasonable visitation shall be included during periods of leave granted to the deployed parent;
 - b. Visitation by Electronic Communication (“Skype visitation”):** Visitation by electronic communication, if appropriate; and
 - c. Court’s Reservation of Jurisdiction:** Court shall reserve jurisdiction to modify or terminate the temporary modification order upon the termination of the deployed parent’s deployment upon such terms and conditions as the court may deem necessary to serve the child’s best interest at the time of the termination of the deployment.
- 2. Expedited Hearings for Deploying Service Members:** Provides for expedited hearings for deployed or soon to be deployed service members regarding custody and visitation.²⁶⁹
- 3. Remote Testimony:** For any such service member, provides, upon the service member’s request, that the Court shall permit testimony by the service member by telephone, audiovisual means, or other electronic means and that the Court shall cooperate with the deployed parent in designating an appropriate location for the testimony.²⁷⁰
- 4. Motion for Visitation by Designee (Substitute Visitation):** Provides that, upon motion, the Court may allow a deployed or soon-to-be-deployed service member to designate a person known to the child to exercise reasonable substitute visitation on behalf of the deployed parent, if the court determines that the substitute visitation is in the best interest of the child (using the already existing statutory criteria).²⁷¹
- 5. Non-discrimination Provision:** The military parent’s deployment history and its impact on compliance should not be considered. “A party’s past, current, or possible future absence or relocation, or failure to comply with the court’s orders on custody, visitation, or parenting time may not, by itself, be sufficient to justify a modification of a prior order if the reason for the

²⁶⁹ 750 ILCS 5/606(f).

²⁷⁰ 750 ILCS 5/606(g).

²⁷¹ 750 ILCS 5/607(h).

absence, relocation or failure to comply is the party's deployment as a member of the United States Armed Forces."²⁷²

Right To An Attorney Through HFS To Raise SCRA Rights

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

C. Payday Loans, Title Loans, and Tax Refund Advances

1. Overview

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

2. Non-military Specific State Law: Payday Loans

The Payday Loan Reform Act of 2005 (PLRA) regulates payday lending and is designed to lend some measure of protection to consumers from certain abuses associated with this type of lending.²⁷³ A payday loan is generally defined in Illinois as:

"a loan with a finance charge exceeding an annual percentage rate of 36% and with a term that does not exceed 120 days, including any transaction conducted via any medium whatsoever, including, but not limited to, paper, facsimile, Internet, or telephone, in which: (1) A lender accepts one or more checks dated on the date written and agrees to hold them for a period of days before deposit or presentment, or accepts one or more checks dated subsequent to the date written and agrees to hold them for deposit; or (2) A lender accepts one or more authorizations to debit a consumer's bank

²⁷² 750 ILCS 5/610(g). [This provision was originally added by P.A. 96-0676 (see below) as 750 ILCS 5/610(e).]

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

account; or (3) A lender accepts an interest in a consumer's wages, including, but not limited to, a wage assignment. The term "payday loan" includes "installment payday loan", unless otherwise specified in this Act.²⁷⁴

The PLRA more specifically recognizes two types of payday loans: (1) a "traditional" payday loan; and (2) a payday loan of longer duration, known as an "installment payday loan." The minimum and maximum repayment terms (time) of what may be called a "traditional" payday loan are no less than 13 days nor more than 45 days. Installment payday loans, on the other hand, may have a term of no less than 112 days or more than 180 days. In addition to these term (time) restrictions, the following limitations apply to basic or traditional payday loans:

- **Finance Charge Limit:** No payday loan may charge more than \$15.50 per \$100.00 loaned;²⁷⁵
- **No Finance Charges After Scheduled Maturity:** No finance charge may be imposed after the final scheduled maturity date;²⁷⁶
- **One Loan At A Time:** Prohibition against lenders issuing more than two loans at a time;
- **No Rollovers:** Prohibition against loan rollovers (i.e., refinancing a payday loan with a new payday loan);
- **"Cooling Off" Period Prior To New Loan:** Creation of a seven-day cooling off period after 45-days of consecutive indebtedness;
- **Right to A Repayment Plan:** The debtor has the right to ask for a repayment plan on a loan 35 days or older with an unpaid balance. The plan should provide a debtor at least 55 days to repay the loan in installments but without the assessment of any more finance charges or other fees; and
- **Right to Prepay:** A consumer has the right to prepay the loan at any time without cost or penalty.²⁷⁷

The PLRA was amended in 2011, to include, among other things, limitations on "installment payday loans." An installment payday loan is a payday loan as defined above that has a minimum term of 112 days and a maximum term of 180 days (instead of 13 and 45 days of a payday loan).²⁷⁸ The PLRA adds additional requirements to installment payday loans:

- **Two-Day Right to Cancel:** The consumer has a right to return all funds received and terminate the loan within two days;²⁷⁹
- **Minimum and Maximum Repayment Terms (Time):** No installment payday loan may have a term of less than 112 days or more than 180 days (to be distinguished from a basic payday loan of 13 to 45 days);
- **Fully Amortized:** The installment payday loan must be fully amortized. The finance charge on the principal balance must be in equal and consecutive installments (see section for further limitations); and
- **Loan May Be Refinanced Once:** An installment payday loan may be refinanced by a new installment payday loan over time during the life of the initial loan as long as the total duration

²⁷⁴ 815 ILCS 122/1-10

²⁷⁵ 815 ILCS 122/1-15(e-5)

²⁷⁶ 815 ILCS 122/1-15(e-5)

²⁷⁷ 815 ILCS 122/2-5(a).

²⁷⁸ 815 ILCS 122/2-5(c)

²⁷⁹ 815 ILCS 122/2-25.

of indebtedness on the initial payday loan plus the total term of indebtedness of the new loan refinancing that initial loan is not more than 180 days.

3. Non-military Specific State law: Car Title Loans

"Title secured loans" or car title loans in Illinois are governed by administrative regulation.²⁸⁰ A "title secured loan" is any loan that has an interest rate greater than 36%, and where the borrower provides title to a motor vehicle as security for the loan when the loan is made.²⁸¹ The regulations regarding title secured loans provide:

- **Simple Interest:** Title loans must compute interest on a title secured loan as simple interest.²⁸²
- **Maximum Loan Amount:** The maximum amount of a title loan is \$4,000.
- **Gross Monthly Income Verification:** Before making a title-secured loan, the lender must get from the borrower at least one form of proof of gross income: (1) most recent pay stub/receipt; (2) most recent government benefits receipt; or (3) other documentation as approved by the Director of the Department of Financial and Professional Regulation.²⁸³
- **Full Amortization/No Balloon Payments:** Title loans must be fully amortized and repayable in substantially equal payments. Balloon payments are disallowed.
- **Debt Management Services Notification:** Before making a loan, a lender must provide a potential borrower with an approved pamphlet describing the availability of debt management services and the obligor's rights and responsibilities in the transaction.
- **Written Acknowledgement:** The loan documentation package must include a signed, written statement from the borrower stating: "I have received from (name of lender) a toll-free number from the Department of Financial and Professional Regulation-Division Financial Institutions that I can call for information regarding debt management services." (The toll-free number must also be provided to the debtor any time the lender sends out a notice of arrears or default.)
- **Identification of Subject Vehicle:** Title loan document must show on its face make/model/year and vehicle identification number (VIN) of vehicle being used as security. (Title loan lender must immediately take into possession the title.)
- **Database Check:** Before making a title loan, a lender is required to run a database check on a potential borrower in a database approved by the director of the Department of Financial and Professional Regulation-Division Financial Institutions for such purposes.²⁸⁴
- **Cooling Off Period:** No loan, other than a permitted refinancing, may be made to a borrower (obligor) who has had a title loan within the preceding 15 days or certain other related events.
- **Limitations on Monthly Payment Amounts:** The monthly payment may not exceed 50% of the borrower's gross monthly income (although the borrower may prepay in any amount).²⁸⁵
- **Limitations on Refinancing:** A lender may allow a borrower to refinance a title loan only if 20% of the principal has been paid, and the new (refinanced) principal amount cannot be greater than the original principal amount.²⁸⁶

²⁸⁰ See 205 ILCS 670/1.

²⁸¹ 38 Ill. Admin. Code 110.300.

²⁸² 38 Ill. Admin. Code 110.340.

²⁸³ 38 Ill. Admin. Code 110.430.

²⁸⁴ 38 Ill. Admin. Code 110.110.370(g).

²⁸⁵ 38 Ill. Admin. Code 110.370(a).

²⁸⁶ 38 Ill. Admin. Code 110.370(b).

- **Prompt Release of Any Lien/Return of Title:** Within 24 hours after paying off the loan, the lender must release any filed/recorded liens, provide evidence of such release, and return the title. (If the payment has been made by check, the lender may delay the release and return for five business days for the purpose of confirming availability of funds.²⁸⁷

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

P.A. 97-0849, effective January 1, 2013, creates the Tax Refund Anticipation Loan Reform Act. A “refund anticipation loan” (RAL) is “a loan that is secured by or that the creditor arranges to be repaid directly from the proceeds of the consumer’s income tax refund or tax credits.”²⁸⁸

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

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

5. Specific Protections for Active Duty Service Members and Dependents

State Incorporation of Federal Law

The Talent-Nelson Amendment to the federal John Warner National Defense Authorization Act led to the insertion of a new provision in Title 10 (governing the armed forces) and gave authority to the Department of Defense to establish regulations concerning the terms of payday loans, vehicle title loans, and tax refund loans to service members on active-duty and their dependents.²⁸⁹ The targeting of these particular products by this regulation is due to the traditionally high interest rates, short payback terms, and a history of consumer problems.

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

²⁸⁷ 38 Ill. Admin Code 110.350.

²⁸⁸ 815 ILCS 177/1, *et seq.*

²⁸⁹ P.L. 109-364, Sect. 670, *amending* Title 10, Chap. 49 by adding new 10 U.S.C. § 987 (2011); *See also* 32 C.F.R. § 232.1-232.11 (eff. Oct. 1, 2007).

The federal protection noted above has been adopted by Illinois as a state right as well. Any violation of the Talent Amendment or any regulation adopted under that provision is a violation of state law.²⁹⁰ More generally, a violation of any federal legal protection pertaining to practices regarding service members and their dependents also is a violation of state law.²⁹¹

State Payday Loan Collection Protections for the Military

Although the PLRA discussed above provides general consumer protection to the public, there is an added protection to military member (“members of the military”). A “member of the military” enjoys certain collection protections under the Act.²⁹² A lender faces the following limits in regard to military borrowers:

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

D. Taxation

1. Illinois Income Taxation and the Military

Although it is well beyond the scope of this summary booklet to treat in any depth issues of taxation that may impact service members and veterans, a few quick points are nevertheless worth highlighting (see immediately below).

Illinois does not tax military pay earned by service members. Using a [Schedule M](#), you may subtract certain military income deemed tax-exempt that has been included in your adjusted gross income (AGI), including:

- **Basic Duty Pay:** Pay for military service in the armed forces, including basic training;
- **Cadet/Midshipman/ROTC Pay:** Pay for military service as a cadet at the U.S. Military, Air Force, and Coast Guard academies, as a midshipman at the U.S. Naval Academy, or in ROTC; OR

²⁹⁰ 815 ILCS 122/2-51 [PA 97-0413, eff. 1/1/2012].

²⁹¹ 815 ILCS 122/2-51.

²⁹² 815 ILCS 122/1-10.

- **Reserve Component Pay:** Pay for military service in the Reserve Component (either in the U.S. Armed Forces Reserves or a National Guard unit, including a National Guard unit of another state).

Note, however, that you may not exclude the following:

- **Military Income Already Excluded from AGI:** Military income (such as combat pay) that you excluded from your AGI on Form IL-1040, Line 1;
- **Voluntary Separation Pay:** Pay you received under the Voluntary Separation Incentive;
- **Civilian Pay:** Pay you received from the military as a civilian;
- **RRMIIP Payments:** Payments you made under the (terminated) Ready Reserve Mobilization Income Insurance Program²⁹³; OR
- **Public Health Service Pay:** Pay for duty as an officer in the Public Health Service.

One should further note that for those Illinois service members, usually public employees, who receive supplemental wage payments (“differential pay”) from their employers while an employee is on active military service, there remains a tax obligation. Since January 1, 2009, any such payment is no longer considered exempt and is treated as income for federal income tax purposes.²⁹⁴ The Illinois military exemptions further do not cover differential pay.

If you are filing on behalf of a deceased service member or veteran, you may additionally subtract all of the deceased’s income whose federal income tax on that income is forgiven because the person died in a combat zone or due to wounds, disease, or injury incurred in a combat zone.

An introductory reference, Publication 102, Illinois Filing Requirements for Military Personnel, is available online or directly from the Illinois Department of Revenue.²⁹⁵ For all other tax questions, the reader is advised to seek qualified, professional tax assistance.

²⁹³ The Ready Reserve Mobilization Income Insurance Program (RRMIIP) was instituted in response to growing concerns about the reported financial losses incurred by some reservists who were activated for the Persian Gulf War (Operation Desert Storm/Shield, 1990-1991). Although the Soldier’s and Sailor’s Civil Relief Act (SSCRA) has long given reservists some protection against financial loss due to mobilization, one survey sponsored by the Department of Defense (DOD) indicated that as many as two-thirds of the reservists activated during Operation Desert³ Shield/Storm suffered economic loss as a result of their deployment. These losses occurred due to differences between the reservists’ military and civilian pay, expenses incurred by reservists because of mobilization, and the decline in business experienced by self-employed reservists during and after release from active duty. Another DOD-sponsored survey indicated that the potential for income loss during an activation was a major concern for both officers and enlisted personnel in the reserves. Lawrence Kapp, Congressional Research Service, Library of Congress, “The Ready Reserve Mobilization Income Insurance Program,” Aug. 3, 1998. [<http://congressionalresearch.com/98-652/document.php?study=THE+READY+RESERVE+MOBILIZATION+INCOME+INSURANCE+PROGRAM>].

²⁹⁴ Heroes Earning Assistance and Tax Relief Act, Pub. L. No. 110-245. (The payments remain exempt from FICA, however.)

²⁹⁵ <http://tax.illinois.gov/Publications/Pubs/Pub-102.pdf>.

2. Property Tax: Introduction to Relief Provisions under the Property Tax Code²⁹⁶

Under Illinois law, several programs designed to provide property tax relief are available to homeowners. Illinois residents may be eligible for a General Homestead Exemption if they own residential property that is occupied as the principal dwelling place of the owner. The General Homestead Exemption allows for a maximum of \$5,000 to be reduced from the equalized assessed valuation of a homeowner's property to which the tax rate is applied to determine the property tax bill.

With the enactment of Public Law 95-644 (October 12, 2007), the Illinois General Assembly provided property tax relief for taxpayers that served in the military. Specifically, the Illinois Property Tax Code was amended to provide tax exemptions for disabled veterans as well as veterans returning for active duty military service.

3. Property Tax: Returning Veterans Homestead Exemption

Eligibility

For the 2007 taxable year, a homestead exemption is provided to eligible returning veterans. The exemption is a one-time \$5,000 reduction in the equalized assessed value (EAV) on the veteran's primary residence.²⁹⁷ The \$5,000 reduction is to be provided "only for the taxable year in which the veteran returns from active duty in an armed conflict involving the armed forces of the United States." *Id.* The term veteran is defined as "an Illinois resident who has served as a member of the United States Armed Forces, a member of the Illinois National Guard, or a member of the United States Reserve Forces."²⁹⁸

Interaction with Other Exemptions

The exemption for returning veterans is in addition to any other homestead exemption provided in Article 15 of the Property Tax Code.²⁹⁹

Application

Returning veterans can claim the exemption by filing Form PTAX-341 *Application for Returning Veterans' Homestead Exemption* with their county assessment office. The determination of eligibility is made by the county assessment office.³⁰⁰ Additional information on this benefit is available on the website of the Illinois Department of Revenue at the following link:
<http://www.revenue.state.il.us/LocalGovernment/PropertyTax/taxrelief.htm>.

²⁹⁶ 35 ILCS 200/15-5 *et seq.*

²⁹⁷ 35 ILCS 200/15-167(b).

²⁹⁸ 35 ILCS 200/15-167(a).

²⁹⁹ 35 ILCS 200/15-167(d).

³⁰⁰ 35 ILCS 200/15-167(c).

4. Property Tax: Disabled Veterans Standard Homestead Exemption

Eligibility

For the 2007 taxable year, a homestead exemption is provided to eligible disabled veterans. The exemption is an annual reduction in the equalized assessed value (EAV) on the veteran's primary residence.³⁰¹ The amount of reduction depends on the extent of the veteran's disability, "as certified by the United States Department of Veterans Affairs."³⁰² A \$5,000 reduction is to be provided "for veterans with a service-connected disability of at least 75%," and a \$2,500 reduction is to be provided "for veterans with a service-connected disability of at least 50%, but less than 75%...."³⁰³ The term veteran is defined as "an Illinois resident who has served as a member of the United States Armed Forces on active duty or state active duty, a member of the Illinois National Guard, or a member of the United States Reserve Forces and who has received an honorable discharge."³⁰⁴ The benefits under this section may carry over to the surviving spouse of the veteran, if the surviving spouse "holds the legal or beneficial title to the homestead, permanently resides thereon, and does not remarry."³⁰⁵ Effective January 1, 2011, a spouse is also allowed to keep the exemption should the veteran enter a nursing home.³⁰⁶

Interaction with Other Exemptions

The exemption for disabled veterans cannot be received if the veterans is receiving the Disabled Persons' Homestead Exemption,³⁰⁷ or the Disabled Veterans Specially Adapted Housing Tax Exemption.³⁰⁸

Application

Disabled veterans can claim the exemption by filing Form PTAX-343-R *Annual Verification of Eligibility for Disabled Veterans' Homestead Exemption* with their county assessment office, and the form must be filed annually. The determination of eligibility is made by the county assessment office.³⁰⁹ Additional information on this benefit is available on the website of the Illinois Department of Revenue, <http://www.revenue.state.il.us/LocalGovernment/PropertyTax/taxrelief.htm>

³⁰¹ 35 ILCS 200/15-169(a, f).

³⁰² 35 ILCS 200/15-169(b).

³⁰³ *Id.*

³⁰⁴ 35 ILCS 200/15-169(f).

³⁰⁵ 35 ILCS 200/15-169(c).

³⁰⁶ 35 ILCS 200/15-169.

³⁰⁷ 35 ILCS 200/15-168.

³⁰⁸ 35 ILCS 200/15-165.

³⁰⁹ 35 ILCS 200/15-169(e).

5. Property Tax: Disabled Veterans Specially Adapted Housing Tax Exemption

Eligibility

A generous but specialized homestead exemption is provided for houses specially adapted for the disabled veteran.³¹⁰ Property up to an assessed value of \$70,000 is exempt from property tax where a veteran has a “disability of such a nature that the Federal Government has authorized payment for purchase or construction of Specially Adapted Housing as set forth in the United States Code, Title 38, Chapter 21, Section 2101.” The benefits under this section apply to a home owned and used by a disabled veteran or owned by the spouse of a qualifying veteran, and may also carry over to the unmarried surviving spouse of the veteran.³¹¹

Interaction with Other Exemptions

The exemption for disabled veterans cannot be received if the veteran is receiving the Disabled Persons’ Homestead Exemption,³¹² or the Disabled Veterans Standard Homestead Exemption.³¹³ Eligibility for this benefit is determined annually by the Illinois Department of Veterans’ Affairs. Additional information on this benefit is available on the website of the Illinois Department of Veterans’ Affairs, <http://www.veterans.illinois.gov/benefits/realestate.htm>.

E. Miscellaneous

1. Military Holidays

Independence Day

Public Employees Under the Personnel Code

Any state employee covered by the Personnel Code is entitled to a paid day off for Independence Day.³¹⁴

Memorial Day

Public Employees Under the Personnel Code

Any state employee covered by the Personnel Code is entitled to a paid day off for Memorial Day.³¹⁵

³¹⁰ 35 ILCS 200/15-165.

³¹¹ *Id.*

³¹² 35 ILCS 200/15-168.

³¹³ 35 ILCS 200/15-169.

³¹⁴ 80 Ill. Admin. Code §303.190.

³¹⁵ 80 Ill. Admin. Code §303.190.

Veterans Day

Public Employees Under the Personnel Code

Any state employee covered by the Personnel Code is entitled to a paid day off for Veterans Day.³¹⁶

2. Licensure

Illinois Military Family Licensing Act

Effective January 1, 2013, the new Illinois Military Family Licensing Act (P.A. 97-0710) amends both the Civil Administrative Code of Illinois at 20 ILCS 5/5-715 (*new*), and the School Code at 105 ILCS 5/21B-20 to provide for the expedited licensure of service members and spouses who are forced to move to the state due to military service. The director of each department (under the Governor) is given authority to issue temporary occupational or professional licenses upon certain conditions.

EMT Fees Waiver

Eligibility for EMT Fees Waiver for Guardsmen: Allows Service Members of the Illinois National Guard to be eligible for a waiver of the fee for an EMT license.³¹⁷

3. Veteran-Owned Businesses

Small Business Loans

Effective July 19, 2010, SB 3817 inserted a provision that adds veteran-owned businesses to those eligible for small business loans through the Illinois Department of Commerce and Economic Opportunity.³¹⁸

³¹⁶ 80 Ill. Admin. Code §303.190.

³¹⁷ 210 ILCS 50/3.50(d)(9).

³¹⁸ 30 ILCS 750/9-2.

Appendix

Appendix A: Sample Employment Letters

1. Notice of Deployment

Mr. John Doe
Human Resources
Company ABC
123 Elm St.
Anytown, IL 12345

Re: BM2 Joe Veteran, United States Naval Reserve and your employee

Dear Mr. Doe:

I am writing to you concerning your employee, Joe Veteran. Joe is also a member of the Naval Reserve unit that I command.

I am writing to ask you, as Joe Veteran's employer, for your cooperation and support to make it possible for him to participate in essential military training and service. I am enclosing, for your information, a schedule of our unit's training for the current fiscal year (through September). [You can vary this letter to use it for a unit mobilization or unit annual training.]

Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), Mr. Veteran has the right to time off from his civilian job for military training or service. USERRA requires advance notice to the civilian employer, except in unusual circumstances, and the law provides that an appropriate officer of the uniformed service may give such notice. As Joe Veteran's CO, I am an appropriate officer, and this letter constitutes sufficient notice under the law.

In the Department of Defense, there is an "Employer Support of the Guard and Reserve" (ESGR) Committee. I invite you to check out the ESGR Web site for a copy of USERRA and other important information about the Reserve components and employer support. You can find the website at www.esgr.org, and you can call the ESGR Committee, toll-free, at 1-800-336-4590.

If you ever have any questions about Mr. Veteran's military service, please feel free to contact me by telephone at xxx-xxx-xxxx or by e-mail at jjj@aol.com. On behalf of the Department of Defense, I thank you for your cooperation and support.

Sincerely,
John Paul Jones
Captain, United States Naval Reserve
Commanding Officer

Encl: Deployment Orders

2. Notice of return / request for reemployment

Mr. John Doe
Human Resources
Company ABC
123 Elm St.
Anytown, IL 12345

Re: Application for re-employment under the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301-4333

Dear Mr. Doe:

I began work for your company on **[date]**. On **[date]** I gave the company notice of my impending call to active duty in the U.S. military. **[If you gave written notice, attach a copy, if possible. If your notice was oral, provide as much information as possible about when, how, and to whom you gave the notice.]** I have completed my period of service, and I am now applying for re-employment.

I have the right to re-employment under the Uniformed Services Employment and Reemployment Rights Act (USERRA), which you can find in Title 38, United States Code, sections 4301-4333. You can find the text of USERRA, and more details on this law, on the Website of the National Committee for Employer Support of the Guard and Reserve (ESGR). Please see www.esgr.com. You can also call ESGR at 1-800-336-4590.

I have attached a copy of my DD-214, showing the date I entered and left active duty and that I was released from duty under honorable conditions. **[If you do not have a DD-214, attach and refer to a copy of your endorsed orders, a letter from your commanding officer, or some other documentation showing the dates and characterization of your military service.]** Please note that I meet USERRA's eligibility criteria as to prior notice, duration and character of service, and timely application for re-employment.

Please accept this letter as my formal application for re-employment. With your permission, I plan to report for work at **[insert time and date]**. If this is not acceptable to you or you have questions, please call me as soon as possible at **[telephone number]**. Thank you for your prompt attention to this matter.

Sincerely,
Joe Veteran

Encl: Deployment Orders

Appendix B: Sample Consumer Letters

1. SCRA, 50 U.S.C. app. 501, sample letters

Sample 6% Interest Rate Cap Letter

(Name and Address of Service member)

(Date)

(Name and Address of Institution)

Re: Interest Rate Reduction for Acct # _____

Dear Sir/Ma'am:

I have been placed on active duty with the Armed Forces of the United States effective **(fill in date placed on active duty)** and am requesting that my monthly obligation including payments and interest on my account be reduced pursuant to my rights under the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501 et seq. My entry into military service has materially affected my ability to meet this obligation which I incurred prior to my entry of active duty at the original interest rate or as it exists currently.

The SCRA (50 U.S.C. App. § 527) sets a 6% per annum ceiling on interest charges (including service charges, renewal charges, and fees) during the period of a service member's military service for obligations made before entry onto active duty when the active duty materially affects the ability to pay. Thus, the balance of my obligation may not have interest charged at a rate greater than 6% per annum and any interest above 6% must be forgiven and not accrued. Note that compliance with this law is mandatory upon the creditor once the soldier makes a request. Failure to comply with such a request can subject the creditor to damages.

Please ensure that your records are amended and or corrected to reflect that my obligation has been reduced to no more than the statutory ceiling rate of 6% and that any excess charge is withdrawn. It is my understanding that certain business entities have reduced their original interest rate to less than 6% as a good faith gesture in support of our country's military personnel and the important mission they serve. Please be further advised that you may not repossess for non-payment of an installment obligation without first complying with the provisions of the SCRA (including Section 532).

Thank you in advance for your attention and prompt action to this matter. Should there be any questions, please feel free to contact me at the above address.

Sincerely,

(Name of service member)

Encl:

Deployment Orders

Sample Termination of Automobile Lease Letter

(Name and Address of Service member)

(Date)

(Name and Address of Institution)

Re: Turning Over Vehicle VIN **(Fill in VIN of vehicle)** Pursuant to the SCRA

Dear Sir/Ma'am:

I have been placed on active duty with the Armed Forces of the United States effective **(fill in date placed on active duty)**. I am the lessee of **(fill in year, make, model, and VIN of leased vehicle)** and I am invoking my rights under the Servicemembers Civil Relief Act, 50 App. U.S.C. § 501 et seq. My deployment has materially affected both my ability to pay for and my need for the vehicle.

Section 535(b)(2) of the SCRA allows a service member to terminate an automobile lease if the service member receives deployment orders for greater than 180 days. In this case, I will be deployed to **(place deployed to)** for at least **(number of days of ordered deployment)**. I have attached a copy of my orders for your file.

In accordance with 50 App. U.S.C. § 535(c), I have mailed this notice via certified mail, return receipt requested and I have already left the vehicle with **(lessor and contact person with the lessor)**. The representative with whom I have been working with at **(name of lessor)** is **(name of contact person)**, and **(he/she)** may be reached at **(phone number for contact person with the lessor)**. Therefore, in accordance with 50 App. U.S.C. § 535(d)(2), the effective date of termination is the postmark date of this letter.

Thank you in advance for your cooperation in this matter, and please feel free to contact me at **(your phone number or the number of someone holding a power of attorney to handle this matter)**.

Sincerely,

Encls:

Deployment Orders

Lease Contract

Sample Termination of Rental Property Letter

(Name and Address of Service member)

(Date)

(Name and Address of Property Management Company or Landlord)

Re: Termination of Residential Lease

Dear Sir/Ma'am:

I have been placed on active duty with the Armed Forces of the United States effective **(fill in date placed on active duty)**. I am the lessee of **(address of rental residence)** and am I am invoking my rights under the Servicemembers Civil Relief Act, 50 App. U.S.C. § 501 et seq. My deployment has materially affected my need for this rental property.

Section 535(b)(1) of the SCRA allows a service member to terminate a residential lease if the service member receives deployment orders for greater than 90 days. In this case, I will be deployed to (place deployed to) for at least **(number of days of ordered deployment)**. I have attached a copy of my orders for your file.

In accordance with 50 App. U.S.C. § 535(c), I have mailed this notice via certified mail, return receipt requested **(notice can also be hand delivered)**. Therefore, in accordance with 50 App. U.S.C. § 535(d)(1), the effective date of termination is 30 days after the first date on which the next rental payment is due and payable after the date on which this notice was delivered (or agreed upon termination date).

I will mail/drop off my keys when I have vacated the rental premises. All security deposits and prorated future rents paid must be returned to me within thirty (30) days of the termination date of this lease. Please mail these monies to: **(address money should be sent to)**.

Thank you in advance for your cooperation in this matter, and please feel free to contact me at **(your phone number or the number of someone holding a power of attorney to handle this matter)**.

Sincerely,

Encls:
Deployment Orders
Lease Contract

Sample Stay of Proceeding Letter from an Attorney

(Name and Address of Service member)

(Date)

(Name and Address of Opposing Counsel/Judge)

Re: Requesting a Stay of Proceedings: **(Name of Action/Caption)**

Dear Sir/Ma'am:

I am **(description of who you are and firm/agency you are with)**. I am writing on behalf of **(name of service member)**, who contacted me because he is the (proposed) Defendant in the case of **(case caption)** in which you have been hired to represent **(opposing counsel's client)**.

Please note that I am not the attorney of record for purposes of representing **(name of service member)** in this civil matter. It is a function of my office to assist and advise service members concerning the necessary steps to initially protect their interests.

(Name of service member) is presently on active duty and is assigned to **(unit information and location)**. As such, he is afforded certain rights under the Servicemember's Civil Relief Act (SCRA), as amended, 50 U.S.C. Appendix, Sections 501-596 (2005). Section 522 of the SCRA states that a court shall, upon application by the service member, grant a stay in a civil action for a period of not less than 90 days.

(Name of service member) hereby applies for protection from further proceedings in the civil action pending filing against him for a period of twelve (12) months. Please find attached a letter from **(name of service member)** commanding officer indicating that his military service materially affects his ability to conduct a defense. Based on **(name of service member)** current military deployment, he will not be able to attend any proceedings subsequently scheduled in this case.

In accordance with 50 U.S.C. App. §522(c), an application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense, including a defense relating to lack of personal jurisdiction. This letter is not to be construed as either a submission to jurisdiction without lawful service or an appearance by or on behalf of **(name of service member)**. Additionally, this letter is not to serve as any form of answer to any petition, motion or complaint filed by **(name of service member)**.

I reiterate that my involvement in this case extends only to the preliminary counsel and assistance afforded to service members by legal assistance attorneys. I (am not/will not be) the attorney of record for **(name of service member)** in this civil matter.

Because **(name of service member)** military service prevents his appearance, I request that you advise the court of his status and request a stay until after **(date of estimated return)**. Finally, **(name of service member)** requests that you notify him of any action concerning the civil case, particularly in regard to the status of any resulting stay of proceedings. In this regard, this information may be provided to him at the following address:

(Service member's name and unit address (or address of family receiving mail))

Thank you in advance for your help in affording **(name of service member)** an opportunity to participate in the legal process while meeting his obligations to the defense of our nation.

Sincerely,

Name and signature block of attorney

Encl: Memorandum from Commander
CC: **(Service member)**

Sample Stay of Proceeding Letter from Military Commander

(Name and Address of Commander and Unit)

(Date)

(Name and Address of Opposing Counsel/Judge)

Re: Requesting a Stay of Proceedings: **(Name of Action/Caption)**

Dear Sir/Ma'am:

I am an officer in the United States Army writing on behalf of **(name of service member)**, who is the proposed defendant in the case of **(case caption)**. **(Name of service member)** is currently deployed in support **(OIF/OEF and where stationed)**. He is assigned to my command.

(Name of service member) will be unable to attend any hearings, present any type of defense, or effectively protect his interests in the matter in question until **(estimated date of return)** because of his military duties. Until this date, **(name of service member)** is mission essential to our unit as a **(duty title/position)**. My legal officer advises me that federal law allows a stay of proceedings for service members on active duty when their ability to defend themselves is materially affected by their military service (50 U.S.C. App. § 521). In this instance, **(name of service member)** critical role in the national security mission of this command precludes his participation in court proceedings until not earlier than **(estimated date of return)**. He will be unable to present any defense at all due to his deployed status.

(Name of service member) hereby applies for protection from further proceedings in the civil action pending filing against him for a period of **(length of time gone)** to properly attend to both his obligation to his unit and this legal proceeding. I will ensure that he is available upon return from deployment to appear at the next scheduled court date after **(estimated date of return)**.

I should note that I am not an attorney and am not making this request based on any attorney-client relationship between myself and **(name of service member)**. I am not representing **(name of service member)** with regard to the proceedings pending. This letter should not be considered an appearance by **(name of service member)**. Rather, it is a request in my capacity as a commander charged with a mission supporting the national security of this nation, that you delay the proceedings to allow this soldier to perform his critical part in that mission.

Thank you in advance for your assistance in this matter. I request that you inform me or **(name of service member)**, at the above address, of any action taken regarding this request.

Sincerely,

Commander's Signature Block

Deployment Orders

CC: **(Name of service member)**

2. Illinois Patriot Plan, Public Act 94-635, sample letters

Sample 6% Interest Rate Cap Letter

(Name and Address of Service member)

(Date)

(Name and Address of Institution)

Re: Interest Rate Reduction for Acct # _____

Dear Sir/Ma'am:

I have been placed on active duty with the Armed Forces of the United States effective **(fill in date placed on active duty)** and am requesting that my monthly obligation including payments and interest on my account be reduced pursuant to my rights under the Illinois Patriot Plan, PA 094-0635 and the Interest Act, 815 ILCS 205/4.05. My entry into military service has materially affected my ability to meet this obligation, which I incurred prior to my entry on active duty, at the original interest rate or as it exists currently.

The Illinois Patriot Plan and The Interest Act sets a 6% per annum ceiling on interest charges (including service charges, renewal charges, and fees) during the period of a service member's military service for obligations made before entry onto active duty when the active duty materially affects the ability to pay. Thus, the balance of my obligation may not have interest charged at a rate greater than 6% per annum and any interest above 6% must be forgiven and not accrued. Note that compliance with this law is mandatory upon the creditor once the soldier makes a request. Failure to comply with such a request can subject the creditor to civil penalty.

Please ensure that your records are amended and or corrected to reflect that my obligation has been reduced to no more than the statutory ceiling rate of 6% and that any excess charge is withdrawn. It is my understanding that certain business entities have reduced their original interest rate to less than 6% as a good faith gesture in support of our country's military personnel and the important mission they serve.

Thank you in advance for your attention and prompt action to this matter. Should there be any questions, please feel free to contact me at the above address.

Sincerely,

(Name of service member)

Encl:
Deployment Orders

Sample Termination of Automobile Lease Letter

(Name and Address of Service member)

(Date)

(Name and Address of Institution)

Re: Turning Over Vehicle VIN **(fill in VIN of vehicle)** Pursuant to the Illinois Patriot Act and the Motor Vehicle Leasing Act

Dear Sir/Ma'am:

I have been placed on active duty with the Armed Forces of the United States effective **(fill in date placed on active duty)**. I am the lessee of **(fill in year, make, model, and VIN of leased vehicle)** and am I am invoking my rights under the Illinois Patriot Plan, PA 094-0635 and the Motor Vehicle Leasing Act, 815 ILCS 636/37. My deployment has materially affected both my ability to pay for and my need for the vehicle.

The Illinois Patriot Plan and the Motor Vehicle Leasing Act allows a service member to terminate an automobile lease if the service member receives deployment orders for greater than 180 days. In this case, I will be deployed to **(place deployed to)** for at least **(number of days of ordered deployment)**. I have attached a copy of my orders for your file.

In accordance with 815 ILCS 636/37(c) I have mailed this notice via certified mail, return receipt requested and I have already left the vehicle with **(name of lessor and contact person with the lessor)**. The representative with whom I have been working with at **(name of lessor)** is **(name of contact person)**, and **(he/she)** may be reached at **(phone number for contact person with lessor)**. (Effective date of termination is the date that both requirements of 815 ILCS 636/37(c) are satisfied.)

Thank you in advance for your cooperation in this matter, and please feel free to contact me at **(your phone number or the number of someone holding a power of attorney to handle this matter)**.

Sincerely,

Encls:
Deployment Orders
Lease Contract

Sample Cellular Phone Contract Termination Letter

(Name and Address of Service member)

(Date)

(Name and Address of Institution)

Re: Termination of Cellular Phone Contract, Phone # _____

Dear Sir/Ma'am:

I have been placed on active duty with the Armed Forces of the United States effective **(fill in date placed on active duty)**. I currently have a cellular phone contract with you, **Phone # _____**, and am I am invoking my rights under the Illinois Patriot Plan, PA 94-0635 and the Military Personnel Cellular Phone Contract Termination Act, 815 ILCS 633/10. My deployment has materially affected my need for and ability to use this cellular phone.

The Illinois Patriot Plan allows a service member to terminate a cellular phone contract without penalty. I will be deployed to **(place deployed to)** for at least **(number of days of ordered deployment)**. I have attached a copy of my orders for your file.

In accordance with the Illinois Patriot Plan I have mailed this notice via certified mail, return receipt requested. Effective date of termination of this cellular phone contract will be thirty (30) days after the date of this notice, **(actual termination date)**.

Thank you in advance for your cooperation in this matter, and please feel free to contact me at **(your phone number or the number of someone holding a power of attorney to handle this matter)**.

Sincerely,

Encls:

Deployment Orders

Cellular Phone Contract

Public Utilities

Under the Public Utilities Act, no company or electric cooperative may stop gas or electricity from entering the residential premises of which a service member was a primary occupant immediately before the service member was deployed on active duty for nonpayment for gas or electricity supplied to the residential premises. 220 ILCS 5/8-201.5(b). Similarly, under the Municipal Code, where utility service is supplied by a municipality, no municipality may stop gas or electricity from entering the residential premises of which a service member was a primary occupant immediately before the service member was deployed on active duty for nonpayment for gas or electricity supplied to the residential premises. 65 ILCS 5/11-117-12.2.

Some public utilities have provided notification forms:

North Shore Gas

<http://www.northshoregasdelivery.com/home/pdf/patriot.pdf>

Peoples Gas

<http://www.peoplesgasdelivery.com/home/pdf/patriot.pdf>

Ameren

<http://www.ameren.com/> (no form provided)

Appendix C: Abbreviations

CFPB	Consumer Financial Protection Bureau
C.F.R.	Code of Federal Regulations
CILA	Consumer Installment Loan Act
CMS	Illinois Department of Central Management Services
DOD	U.S. Department of Defense
DOJ	U.S. Department of Justice
DOL	U.S. Department of Labor
ESGR	Employment Support of the Guard and Reserve
ILCS	Illinois Compiled Statutes
Ill. Admin. Code	Illinois Administrative Code
PLRA	Payday Loan Reform Act of 2005
RAC	Refund Anticipation Check
RAL	Refund Anticipation Loan
REFRAD	Release from Active Duty
SCRA	Servicemembers Civil Relief Act (federal law)
SMCRA	Service Member Civil Relief Act (Illinois law)
UCX	Unemployment Compensation for Ex-Service Members Program
U.S.C.	United States Code
USERRA	Uniformed Services Employment and Reemployment Rights Act