

Representing Veterans and Military Personnel:

Sources of info and Help:

- ◆ Military, Veterans and Family Member- Legal
 - <http://statesidelegal.org>
 - LSC funded Initiative, up and running but still growing
- ◆ Consumer Financial Protection Bureau
 - <http://www.consumerfinance.gov>
 - Office of service member Affairs
 - <http://consumerfinance.gov/servicemembers>
- ◆ Ohio Guide to SCRA
 - <http://www.ohiobar.org/general%20resources/pub/OHGuideservicecemembersreliefact.pdf>
 - Col. Duncan Auckland- Ohio National Guard Staff Judge Advocate
- ◆ NC LAMP Committee- Great Guides
 - <http://www.nclamp.gov/>
- ◆ Military Benefits- Including legal
 - Military one Source- www.militaryonesource.mil
- ◆ Unique Military Laws and Guides
 - ABA Legal assistance for military Personal (LAMP)
 - www.americanbar.org/groups/legal_assistance_military_personnel.html
 - Army TJAG School
 - <http://jagcne.army.mil/legal>
- ◆ Military Legal Assistant Offices
 - Armed Forces Legal Assistance – Locator
 - [Legalassistance.law.af.mil/index.php](http://legalassistance.law.af.mil/index.php)
- ◆ Ohio Department of Veteran Services
 - <http://dvs.ohio.gov/>
- ◆ Veterans Service Organizations
 - Sample List
 - <http://www1.va.gov/vsoindex.cfm>
- ◆ Veteran Service Commission
 - 1849 Prospect Ave. Ste. 150 Cleveland Ohio 44115
 - Ph: (216) 698-2600 Fax: (216) 698-2650
 - <http://vsc.cuyahogacounty.us/>
- ◆ Veteran Benefits- Federal Benefits for Veterans, Dependents, and Survivors
 - Primer on Benefits available to Veterans
 - www1.va.gov/OPA/publications/benefits_book.asp
- ◆ Statesidelegal.org
 - Agent Orange, Sexual Trauma, PTSD, Traumatic Brain Injury
 - Education
 - <http://statesidelegal.org/vetans-benifits>

Terminology:

- ◆ Military can mean:
 - Active Duty- Army, Air Force, Navy, Marines, Coast Guard
 - Reserve
 - Active (title 10)
 - Training
 - Inactive
 - National Guard
 - Active or in “Federal Status” (title 10)
 - Mobilized for emergency (title 32)
 - Training
 - Veteran- someone who served in the military
 - Retiree- Someone who is now drawing or entitled at some later date to draw military retired pay (eg., retirees from active duty draw retired pay immediately upon retirement while reservists must wait until a certain age (currently 60) to draw their \$\$)
- ◆ How to determine status for military personnel
 - Ask to see ID card
 - Ask to see copy of members “orders”
 - For Veterans
 - Ask to see DD-214 (Certificate of release or Discharge from Active Duty)

Special Considerations with Military Personal:

- ◆ Servicemember Group Life Insurance
 - \$400k for active duty member
 - Dependents also insurable
 - www.insurance.va.gov
- ◆ Survivors Benefits Plan
 - Surviving Spouse- % of military retirement plan
 - Need to Elect (there is a 1 year rule)
 - www.defenselink.mil/militarypay/survivor/sbp/
- ◆ Medical- Tricare
 - “Free” Medical care for ARG and dependents
 - Retirees- Different AD & Reserve Rules
 - www.tricare.mil
- ◆ Child and Family Support
 - Minimum support guidelines for each service
 - BAH WITH- basic allowance for housing with dependents Rate
 - <http://perdiem.hqda.pentagon.mil/perdiem/>
 - Military Guidelines- See *Army Family Support, Child Custody, and Paternity, AR 608-99*

- ◆ Many SM's receive Significant Non- Taxed Allowances
 - Eg. Housing, rations, uniform, special duty, hazardous duty, sea duty, language
 - Normally included in eligibility calculations for legal aid
 - Normally factored into child/ spousal support equation
- ◆ Divorce- Issues
 - Uniformed Services Former Spouses Protection Act (USFSPA, 10 U.S.C. §1408)
 - Allows for the division of military retired pay
 - Decree/agreement must comply with DFAS Guidance re division order- See www.dfas.mil- search "USFSPA"
 - Standard QDRO Language often does not suffice
 - Retired pay may be reduced by disability pay
 - Beware order dividing " Disposable Retired Pay"
 - Try instead "gross retired pay" and include indemnification clause
- ◆ Ohio Attorney General
 - Certain Special Services for Military and Veterans
 - Expedited processing of consumer complaint claims for deployed personal
 - *Good rule of thumb for clients-* identify self as military or Veteran in any contact with the AG's office
 - More info: (800) 282-0515 or <http://www.ohioattorneygeneral.gov/individuals-and-families/military-and-veterans>

Veterans Benefits or Veteran Claims:

- ◆ Attorneys must be accredited by VA
 - Training requirements
 - VA form 21a
 - <http://www.va.gov/ogc/accreditation.asp>
- ◆ No fee may be charged for preparing
 - Application for VA Benefits
 - Presenting claim to VA
- ◆ Fees may be charged for assistance
 - After VA has issued a decision on a claim, and
 - Notice of disagreement has been filed – initiating an appeal
 - VA- approved POA and Fee Agreements are in place
- ◆ Veterans Courts
 - Cleveland Municipal Court
 - Judge Charles Patton, Jr.
 - Another POC, Magistrate Lynn McGauglin-Murray
 - Murrayl@cmoh.org

Service Members Civil Relief Act (SCRA)

- ◆ Federal Law
 - State Supplements
- ◆ 50 U.S.C. App. §§501-597
 - Default Judgments
 - Stays
 - Early Lease Terminators
 - Interest Rate Caps
 - Private Cause of Action
 - Foreclosure Protection
- ◆ Coverage
 - Active Duty (title 10 of USC)
 - Army, Air Force, Navy, Marines and Coast Guard
 - No requirement to be deployed or in a combat zone
 - Reserve Component
 - Activated (on orders issued under Title 10)
 - National Guard
 - Activated
 - National Emergency (title 32)
 - Family Members and Dependents
 - For some Protections not all
- ◆ Criminal Penalties
 - Violations of the following sections may be prosecuted as criminal Misdemeanors (class A)
 - §521- Default Judgments- False affidavit
 - §527- Max rate of interest on pre-service Debts
 - §531- Evictions and Distress
 - §532- Installment contracts for purchase or lease
 - §533- Mortgages and trust deeds
 - §535- Termination of residential and motor vehicle leases
 - §536- Protection of life insurance Policy
 - §537- Enforcement of storage liens
- ◆ Purpose and Application
 - Enable service members (SMs) to devote their entire energy to the defense needs of the nation
 - Temporary suspension of judicial and administrative proceedings and transaction
 - *LeMaistre v. Leffers*, 333 U.S. 1,5 (1948) (“[T]he Act must be read with an eye friendly to those who drop their affairs to answer their county’s call.”)
 - *Boone v. Lightner*, 319 U.S.. 561, 575 (1943) (“The soldiers and sailors’ Civil Relief Protection Act is always to be liberally construed to protect those who have been obligated to drop their own affairs to take up the burden of the nation”)

- ◆ Default Judgments (50 U.S.C. App. §521)
 - No appearance by a service member (SM)
 - Require Affidavit of Military Status by Moving Party
 - If Non-moving party a SM, court should appoint an Attorney
 - If status can not be determined
 - Bond, or
 - Orders or Judgments to protect SM
 - Grant Stay of at Least 90 days
 - If defense may exist and SMs presence needed
 - Appointed Attorney Cannot Contract
 - Reopening
 - A court must reopen if
 - SM materially affected due to military service in asserting defense
 - SM has a meritorious defense
 - Only applies is SM did NOT make an appearance
- ◆ Stay of Proceedings (50 U.S.C. App. §522)
 - Request NOT an appearance
 - Motion of SM, Mandatory Minimum 90 Day Stay
 - Statement of Unavailability due to Military duties and when will be available
 - Statement from SM's Commander- leave not authorized
 - Beyond 90 Days- Discretionary
 - Should grant if conditions remain & SM's presence needed
 - Denied- Court must appoint attorney
 - Motion of Court- Discretionary
 - Denied? Court must appoint attorney
- ◆ Stay or Vacation of Judgment, Attachment & Garnishments (50 U.S.C. App. §524)
 - Motion of SM
 - Must stay or Vacate if SM materially affected by Military duties
 - Material Affect? Courts opinion
 - Motion of Court
 - May stay or Vacate
 - Duration of Stay (50 U.S.C. App. §525)
 - Up to period of service plus 90 days
 - Terms and Amounts of installment payments – Court find reasonable
- ◆ Statute of Limitations (50 U.S.C. App. §526)
 - Tolling of Statute of Limitations During military service
 - Military Service cannot be included in computing any period limited by law, regulation or Order
 - Applies to court action, Board, Bureau, Commission, Department, or Agency of State or Subdivision
 - Redemption of Real Property
 - Period of Military Service not included in computing redemption period for real property sold or forfeiture to enforce obligation, tax or assessment

- SM does not need to show “Military Affect”
- ◆ Maximum Rate of Interest (50 U.S.C. App. §527)
 - Pre-Service Loans
 - Material Impact
 - Assessed by SM; Creditors may challenge in court
 - 6%
 - Retroactive to date of entry on active duty
 - Excess Forgiven
 - Ohio Version (ORC §1343.031)
 - Not limited to pre-service loans
 - Extends to spouses
- ◆ Evictions and Distress (50 U.S.C. App. §531)
 - Rental Property- Primary Residence
 - Military Member or Dependents
 - Eviction and Distress Require Court Order
 - Rent must not exceed DoD set amount – adjusted annually
 - For 2012- Rent set at \$3047.45
 - Stay of Execution of eviction or distress order
 - Adjust obligation under the lease
 - Criminal Penalties
- ◆ Installment Contracts (50 U.S.C. App. §532)
 - Court Order Required
 - Rescind or Terminate and installment contract for purchase, lease, or bailment or real or personal property (including motor vehicle) or,
 - Repossession of such real property
 - Only Applies to installment contracts that originated before period of military service
 - Damages for violation and criminal penalties
- ◆ Mortgages and Foreclosures (50 U.S.C. App. §533)
 - Court Order Required
 - Sale, Foreclosure or seizure of property for breach of mortgage
 - Only applies to mortgages that originated before periods of military service
 - Court may stay foreclosure proceedings, extend mortgage maturity date, adjust obligation “to preserve the interest of all parties”
 - DOJ settlement
 - April 2013- \$39M paid to SMs illegally foreclosed on
- ◆ Residential or Vehicle Leases (50 U.S.C. App. §535)
 - Entry on active duty, permanent change of station orders, or deployment orders
 - Early termination of residential and vehicle leases
 - Proper notice
 - Return of security deposit
 - Criminal Penalties
- ◆ Telephone Service Contracts (50 U.S.C. App. §535a)

- Orders to Relocate
 - Location does not support service
 - Received after phone service contract signed
- Ohio Version- ORC §1340.03
 - Allows SMs and spouses to terminate cell phone contracts
 - Must be “deployed on active duty”
- ◆ Storage Liens (50 U.S.C. App. §537)
 - Enforcement or Foreclosure of lien requires court order
 - Stay of proceedings- SM or Court
 - Criminal penalties
- ◆ Extension to dependents (50 U.S.C. App. §538)
 - Upon application to court
 - Dependent is entitled to protection of
 - Materially affected by SMs military service
 - Protection for eviction, distress, lease termination, mortgage and foreclosure installment contracts, storage liens
- ◆ Legal Representatives (50 U.S.C. App. §519)
 - Attorney acting on behalf of SM or individual possessing power of attorney granted by SM
 - Legal representatives may assert protections of SM under SCRA
 - Includes appearances in courts and administrative hearings- if POA so allows
- ◆ Private Action & DOJ (50 U.S.C. App. §597a)
 - Private right of action
 - SM or any part aggrieved by violation of SCRA
 - May pursue civil action to obtain relief
 - Court costs
 - Damages
 - Attorney fees
 - Department of Justice
 - Main Justice – Civil rights Division
 - Both SCRA and USERRA
 - Liz Singer (202) 514-6164
 - Local US Attorney- “SCRA AUSA”
 - http://www.justice.gov/crt/spec_topis/military/index.php
- ◆ Uniformed Services Employment and Reemployment Rights Act (USERRA)
 - Primary source of federal protection
 - Ohio includes “Military Status” as a prohibited basis for job discrimination
 - Protection encompasses hiring, tenure, condition and privileges of employment
 - See ORC Ann. §4112.02(E)(4)
 - Gives SMs right to go back to civilian job held before federal military service- under certain conditions

- Applies to-
 - All private employers, the states, and all branches of the federal government
 - Union hiring halls and similar entities that have employment-related responsibilities
- 38 USCA §§4301-4335
- Complaints
 - Private right of Action
 - Federal court or MSB For Federal Employers
 - Employer Support to the guard and reserves
 - (ESGR) Education and Mediation Services
 - <http://www.esgr.mil/OH.aspx>
 - Christine Kloss, Employment Support Specialist, 2825 W. Dublin, Granville Ohio 43235 (614)336-7378, Christine.J.Kloss.ctr@mail.mil
 - DoL- File a complaint with the local office of the DOL veterans employment and training service (VETS)
 - VETS- enforcement Authority
 - ◆ May lead to DOJ Prosecution
 - Ohio DOL VETS Office
 - US Department of Labor
4020 East 5th ave., Room M-153
PO Box 1618, Columbus Ohio 43219
PH: (614) 466-2768
 - Watch out- Representation may or may not preclude DOL VETS intervention
 - Other Resources:
 - Local, State, and Federal elected Officials
 - ◆ Many have a “Veterans” rep on their staff
 - ◆ Eg. Laura Pechaitis, Senator Brown’s Office Cleveland Office- 1301 E. 9thst., Suite 1710 Cleveland, Ohio 44114 (888)896-6446; Laura_Pechaitis@brown.senate.gov
- 5 Part Checklist:
 - 1. Civilian Job before period of Active duty
 - 2. Notice before leaving for active *Prior notice not required if precluded by military necessity or of “impossible or unreasonable”*
 - 3. Under 5 year cumulative total
 - 4. Must have honorable or general discharge *No protection of active duty ends with an OTH or Bad conduct discharge, or a drop from the rolls*
 - 5. Prompt return to work- Specific time- lines apply *Convalescence leave extension if possible*
 - Military Service of 30 days or less-
 - ◆ Report back to first shift beginning after safe travel time from military duty site plus eight hours rest
 - Military service of 31-180 days

- ◆ Must apply in writing for reemployment within 14 days after completing military service
 - Military Service of 181 days or more-
 - ◆ Must apply in writing for reemployment within 90 days after completing military service
- Protection During Service
 - Health Insurance Coverage
 - Upon request, Members can maintain health coverage for up to 30 days of service for member and family members
 - Non-Seniority Benefits
 - Employer must treat service member like any other employee of similar seniority and status who is on furlough or leave of absence (for holiday bonuses, life insurance, loans, profit sharing plans, ect.)
- Protections Upon Return (8)
 - 1. Prompt reinstatement upon return
 - 2. Accrual of Seniority
 - 90days or less: entitled to same exact job
 - 91 days or more: employer must return you to a position of like seniority, status, and pay
 - Also same treatment as peers with regard to raises, promotions, pay cuts, or job elimination
 - 3. Status: *Entitled to previous title and same status as peers (day/night shift or department rotations)*
 - 4. Retaining and Other Accommodations
 - Employer must take “reasonable efforts” to train a member on new equipment or techniques, or to refresh skills not used during service
 - Employer must accommodate service-connected disability, or offer alternative employment
 - 5. Immediate reinstatement of health benefits: no waiting periods or exclusions for pre-existing conditions, whether or not health insurance coverage during service requested
 - 6. Special protections against discharge during protected periods except for cause:
 - One year period for 181 days or more
 - 180 day protected period of gone 31 to 180 days
 - 7. Antidiscrimination Provision
 - USERRA prohibits discrimination based on military or military service obligation
 - USERRA prohibits retaliatory action against those who seek to enforce USERRA, to include civilian witnesses
 - 8. Pension Benefits
 - Employers must count any period of federal military service protected und USERRA as if it were service with the employer
 - Applies to benefit eligibility (vesting) and to calculation of benefit computations

- It the pension plan uses employee contributions or deferrals the returning member gets up to three times the period of absence, up to five years, to make up contributions
- Other considerations:
 - Exceptions
 - Employers can petition for waiver- if compliance places an unreasonable burden on the business
 - DoD and some other federal employers exclude certain civilian positions being filled by reserve personnel
 - ◆ Limited number- need high level approval
 - Great Resource- CAPT Sam Wright, USNR (ret)
 - ◆ Director, Service members Law Center (800)809-9448, ext. 730
email: swright@roa.org
 - ◆ http://servicemembers-lawcenter.org/home_page.html