SECRETARY OF THE ARMY
WASHINGTON

20 MAY 2019

MEMORANDUM FOR

ASSISTANT SECRETARY OF THE ARMY (MANPOWER AND RESERVE AFFAIRS)
DEPUTY CHIEF OF STAFF, G-1
CHIEF, ARMY RESERVE
DIRECTOR, ARMY NATIONAL GUARD

SUBJECT: Periods of Service Exempt from 5 year Cumulative Limit Under the Uniformed Services Employment and Reemployment Rights Act

1. References:

a. Title 38 United States Code (USC), Section 4312 (Reemployment Rights of Persons who Serve in the Uniformed Services).

b. Department of Defense Instruction (DoDI) 1205.12, Civilian Employment and Reemployment Rights for Service Members, Former Service Members and Applicants of the Uniformed Service, February 24, 2016.

c. Army Regulation (AR) 135-200 (Active Duty for Missions, Projects, and Training for Reserve Component Soldiers), 26 September 2017.

d. AR 350-1 (Army Training and Leader Development), 10 December 2017.

2. The purpose of this memorandum is to certify the periods of service deemed exempt from the Uniformed Services Employment and Reemployment Rights Act (USERRA) 5 year cumulative limit for Army Reserve and Army National Guard Soldiers pursuant to references 1a and 1b. The USERRA provides protections to Reserve Component (RC) Soldiers who are absent from a position of civilian employment because of military service. Generally, the cumulative length of absence from civilian employment cannot exceed 5 years; this rule is known as the 5 year cumulative service year limit. However, USERRA exempts certain periods of active duty from the limit.

3. The following types of service are statutorily exempt from USERRA's 5 year cumulative limit:

a. Service under Title 10, USC, Sections 688, 10147, 12301(a), 12301(g), 12302, 12304, 12304a, 12304b,12305, and 12406.

b. Service under Title 32, USC, Sections 502(a) and 503.

c. Service under Title 32, USC, Section 502(f)(2)(A), when ordered to full-time National Guard duty (other than for training) by the President or the Secretary of Defense for the

purpose of responding to a national emergency declared by the President and supported by Federal funds, as determined by the Secretary of the Army.

4. In addition to the periods that are statutorily exempt, reference 1b, assigns authority to the Secretary of the Army to determine certain periods of service exempt from the 5 year cumulative limit. The following are approved exemptions to the 5 year limit and shall not count toward the five year accumulation:

a. Service under Title 10, USC, Section 12301(d) when utilized for Contingency Operation-Active Duty Operational Support (CO-ADOS) as defined in reference 1c.

b. Service under Title 10, USC, Section 12301(d) when utilized to attend an in-residence Professional Military Education course as defined in reference 1d.

c. Service under Title 10, USC, Section 12301(h).

5. Pursuant to reference 1b, I delegate the authority to the Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA(M&RA)) for determining what constitutes an exempted critical mission or requirement not covered in paragraph 4 of this memorandum. Requests for an individual exemption under the critical mission or requirement must be reviewed and recommended by the Chief, Army Reserve or the Director, Army National Guard before submitting to ASA(M&RA) for approval.

6. Pursuant to reference 1b, enclosure 2, paragraph 1b(10), the Chief, Army Reserve and the Director, Army National Guard will:

a. Establish component specific policy that will facilitate the certification of a Soldier's period of service exemption status upon a Soldier's or employer's request.

b. Designate an office within your headquarters that serves as the proponent on USERRA matters. You are authorized to work directly with Employer Support for Guard and Reserve on policy questions and to coordinate responses to Soldier or employer inquiries.

7. The Deputy Chief of Staff, G-1 will incorporate the USERRA exemption authority as a mandatory entry to RC personnel orders generated within Integrated Personnel and Pay System—Army.

Mark T. Esper

CF: Administrative Assistant to the Secretary of the Army