



Guarding the Guardians

By Daniel P. Bestul

National Guard and Reserve units throughout the have been ordered to active duty for deployment. More and more families will feel the effect of mobilization. Business too, will feel an impact, as key employees leave with their units.

Over the years, Congress has enacted several laws, designed to protect service members and their families from the economic crunch caused by an extended, unplanned active duty tour. The best known law is the Soldiers and Sailors Civil Relief Act of 1940 (SSCRA) which has, as its stated purpose, "to provide for, strengthen and expedite the national defense...and enable (service members) to devote their entire energies to the defense needs of the nation," -50 USC Appendix Section 501. The SSCRA applies to anyone who is serving on active duty, for any period of time, regardless of whether they belong to the regular forces, or, as in the case of the reserves, are called-up for a limited period.

In general, the service member is entitled to the protection of the law as of the date he or she reports for active duty. Some of the SSCRA's protections are automatic; some do not apply until the service member requests protection.

The exact application of the SSCRA is determined on a case by case; in most instances, the application of the law depends on the manner in which the active duty service affects the service member's ability to meet his or her obligations. Any of the protections may be denied if the active duty service does not materially affect the service member's ability to meet his or her obligations, but the Act has usually been liberally interpreted to grant relief.

The law covers virtually all agreements and obligations, and may also provide protection to a service member's family, as well as any co-signers, endorsers or guarantors of the service member's obligation. In most cases, a court must decide if it is appropriate to extend the protection that far.

Included in the Soldiers and Sailors Civil Relief Act are provisions which:

- a. Bar courts from entering a default judgement against a service member, and allows a service member to re-open an improperly entered judgment after the end of his or her active duty service.
- b. May reduce the rate of interest on pre-active duty obligations - including auto loans and other installment payments, and credit card debts - to 6 percent per annum.
- c. Void financial penalties for non-performance of contracts that were made before the period of active-duty service.
- d. May provide protections against foreclosures on mortgages and land contracts, and severely restrict evictions of the service member's families.
- e. Grant a tenant-service member rights to terminate leases that are not covered or granted by state law.
- f. Delay enforcement of most tax obligations, and allow for extensions for filling income tax returns and paying income taxes.





A second law guarantees the right to re-employment for an individual called to active duty, even if he or she volunteers for the duty. To qualify for these rights, the service member must: be discharged from the active duty tour under honorable conditions, and apply for re-employment within a fixed period of time after discharge from active duty.

Under this law, if the service member still qualifies for his/her old job, the employer must restore the service member to the same job, or one of like seniority and pay. If the service member no longer qualifies for the old job, the employer must offer a job providing the nearest approximation of seniority, status and pay. The employer is required to do this, unless they can prove it is either unreasonable or impossible. The purpose of the law is to treat the service member as if his/her employment has been continuous, and not interrupted by military service.

Both laws apply to any individual called to active duty, regardless of whether that duty service is at the local armory, a training post like Fort McCoy, or overseas. Protection under the SSCRA is determined, to a large extent, on a case by case basis; however, the right to re-employment is extended to all.

An active duty call up places a tremendous emotional burden on the service member and his family. Though nothing can eliminate the burden, these laws are designed to reduce the concern over financial affairs, and allow the service member to concentrate on the military duties at hand.

