

# **Chapter Twenty–Four National Guard and Reserve Call-Up Issues**

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## **Or: Uncle Sam Wants You . . . Back!: Recall and Mobilization from Inactive Duty**

**By Brian Baldrate**

Imagine the following scenario: After serving four years honorably in the Army Reserves you complete your military duty, hang up your boots, and return to civilian life. Three years later you are operating your own landscaping company when you receive a Western Union telegram ordering you to report for military duty in 30 days! Far-fetched? Unfortunately, it is not. In fact, since 9/11, thousands of former servicemembers have faced this exact situation and have been recalled to active duty as part of the wars in Iraq and Afghanistan. The Army and Marine Corps both recently announced plans to involuntarily activate thousands of additional “former” servicemembers in Summer 2007. This chapter explains the concept of inactive duty service obligations, details how servicemembers are recalled from an inactive status, and explains your options if you receive a mobilization order recalling you to active duty.

## Inactive Duty

While some members choose to remain in the military for an entire career, others complete their active or reserve duty thinking their military service is complete. In reality, upon completion of active or reserve service, most members of the armed forces are transferred into some form of inactive duty, typically the Individual Ready Reserve (IRR).<sup>3</sup> This is because regardless of the length of your active or reserve contract, typically four years, everyone entering the United States military incurs a minimum eight-year military service obligation. Therefore, following completion of a four-year initial enlistment period, servicemembers are automatically transferred into the IRR for the remainder of their service obligation.

It is understandable that many members of the IRR may not feel like they are still part of the armed forces. Typically members of the IRR have had little or no interaction with their respective military services for months or even years. While the Pentagon has recently made efforts to bolster the readiness of the IRR, and a 2004 law requires that members of the IRR provide the armed forces with both their home address and the name of their civilian employer, the IRR remains essentially a completely unstructured organization. Members of the IRR do not receive pay or benefits, do not drill or train, and do not interact with the military at all.<sup>4</sup> Despite the fact that some members of the IRR may not feel like they are part of the armed forces, it is important that every member of the IRR understand their status as an inactive duty soldier and know their options in the event they receive an unwanted Western Union telegram or letter.<sup>5</sup>

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<sup>3</sup> Members of the National Guard may be placed in the inactive National Guard instead of the IRR.

<sup>4</sup> IRR members can request to participate in training operations but most do not. IRR members can also receive retirement credit if they meet basic eligibility criteria through voluntary or involuntary mobilization.

<sup>5</sup> Of course some members of the IRR relish their role as a member of the armed forces. These servicemembers can volunteer to be mobilized to active or reserve duty, and once mobilized, can volunteer to extend the length of their mobilization. This chapter focuses on situations where the military involuntarily mobilizes members of the IRR without their consent.

### ***Involuntary Mobilization from Inactive Duty***

There are three different ways that members of the IRR can be involuntarily recalled to active federal duty: a Presidential Reserve Call Up, a Partial Mobilization, or under a Full Mobilization.

#### ***Presidential Reserve Call Up (PRC)***

The Presidential Reserve Call Up (PRC) is the most frequent tool used to recall servicemembers to active duty. It was used to recall forces during the early 1990s during the First Gulf War, and again throughout the nineties for a limited number of mobilizations to Bosnia, Kosovo, and Haiti. The PRC has been used repeatedly since 9/11 in fighting the current two wars. The PRC, 10 U. S. C §12304, gives the president the authority to recall servicemembers to active duty whenever he deems it necessary to augment the active forces for any mission or to provide assistance in responding to an emergency involving weapons of mass destruction or a terrorist attack.

Despite this broad presidential authority, there are important limitations on the PRC. First, under the PRC, the president can activate up to only 30,000 members of the IRR.<sup>6</sup> Second, servicemembers recalled under the PRC can be mobilized for a maximum of only 270 days. Third, servicemembers cannot be recalled to active duty to help establish law and order or to provide assistance during natural or man-made disasters. In 2006, following continued mobilizations for the wars in Iraq and Afghanistan, and in the aftermath of Hurricane Katrina, Congress amended the PRC and authorized the president to mobilize servicemembers for up to a maximum of 365 days and, in limited circumstances, allowed mobilized servicemembers to assist in national disasters. Nevertheless, the president is still limited to recalling a maximum of 30,000 members of the IRR.

#### ***Partial Mobilization***

Despite the president's frequent reliance on the PRC, following 9/11 the Defense Department has used partial mobilization as an additional means of recalling inactive reservists to active duty for longer periods of time. During a national emergency *declared by the president*, partial mobilization, 10 U. S. C §12302, allows the United States to recall up to one million reservists (from either the Select Reserve or the IRR) for up to 24 months. This 24-month mo-

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<sup>6</sup> Under the Presidential Reserve Call Up, the President can recall up to 200,000 total reservists, only 30,000 of whom can come from the IRR.

bilization, however, is tied directly to the national emergency declared by the President. For example, following 9/11, President Bush declared a national emergency relating not just to the defense of domestic homeland sites such as the World Trade Center and the Pentagon, but also to the overall wars in Iraq and Afghanistan. Therefore, any servicemember recalled under a partial mobilization relating to these wars can be mobilized only for a period of 24 months. Exactly what it means to be mobilized for “no more than 24 months” has shifted over time. Under DoD’s longstanding policy, no servicemember recalled under a partial mobilization was allowed to be involuntarily mobilized for more than 24 *cumulative* months. This period included travel time, training and leave, and multiple deployments. In February 2007, however, the Pentagon altered its partial mobilization policy and extended mobilizations for 24 *consecutive* months with no limit on the number of *cumulative* months a servicemember could involuntarily be required to serve. Under this approach, servicemembers are de-mobilized before reaching 24 consecutive months and sent home; but then are subject to an indefinite and unlimited number of additional mobilizations thereafter.

### ***Full Mobilization***

Although it has not been used since the Vietnam War, a full mobilization is a third method of mobilization that can be used to recall members of the IRR back to active duty. 10 U. S. C §12301 provides that during a war or national emergency *declared by Congress* the entire reserve forces of the United States, including the IRR, can be recalled for the duration of the war or national emergency plus six months. A full mobilization is the largest form of mobilization. In addition to allowing the recall of the entire armed forces for the duration of the conflict and six months, a full mobilization would also enable the United States to mobilize any person conscripted into service if the United States ever decides to reinstitute a draft. Because a full mobilization is such a powerful tool, however, it cannot be used without a congressional declaration. To date a full mobilization has not been used to mobilize servicemembers in support of the wars in Iraq and Afghanistan and the Pentagon has made no requests seeking such a mobilization.

### ***Recruiters and the Imminent Recall Myth***

While not an actual recall, military recruiters have led servicemembers to reenlist under the pretense that a “call-up” was imminent. For example, in the summer of 2003, IRR members received letters from reserve recruiters stating

that a call-up was imminent for IRR. The letters stated that IRR soldiers who “voluntarily” joined a National Guard unit could pick one with the “help” of the recruiter that would not be called up, but IRR members who did not “voluntarily” join a National Guard unit by mid-June would be placed in a unit that was going to be called up immediately.

Thousands of IRR members joined the National Guard prior to the June deadline trying to find the units that were not on the short list to be deployed. Later, the new reservists were notified that the recruiters had “misunderstood” an order from the Pentagon and the letters were a mistake. Members of the IRR who ignored the recruiters’ letters and chose not to “volunteer” were left untouched. While such recruiting tactics are dubious at best, variations on this scenario continue to occur. Numerous members of the IRR have reported receiving calls and letters from recruiters purporting to be able to “help” them in the face of impending call-ups, which ultimately did not materialize. The bottom line is that you should beware of recruiters bearing gifts. If you do receive a legitimate call-up, it will not come from a military recruiter.

## ***Failing to Report, Delays, Deferment, Exemption, & Separation***

### ***Failing to Report***

Military policy is that a member of the IRR who fails to comply with an order to active duty can be reported to civilian authorities as Absent Without Leave (AWOL).<sup>7</sup> Moreover, IRR servicemembers ordered to active duty typically become subject to the UCMJ on their reporting date, regardless of whether they actually report to duty.<sup>8</sup> A servicemember found guilty by a court-martial of these charges could face jail of up to five years, loss of pay, loss of rank, and a dishonorable discharge.<sup>9</sup> While the Army has recalled thousands of IRR members since 2002, more than 25 percent have failed to report. To date, no known IRR member has been arrested or court-martialed for failing to appear.<sup>10</sup> The most negative reported event has been for a member of the IRR to receive an

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<sup>7</sup> See, e. g., Army Regulation 635-10, para. 6-4 (Jan 2006)

<sup>8</sup> UCMJ 802. 2(a)(1)

<sup>9</sup> Manual for Courts Martial Appendix 12

<sup>10</sup> In fact, to date no known member of the IRR who failed to report has had an AWOL or deserter warrant issued. Nevertheless, the Marines have recently indicated that, for purposes of conducting an administrative board, they plan to recall several members of the IRR who were wearing their uniforms during political demonstrations.

administrative discharge of “other than honorable” from the IRR—a discharge that does not affect the benefits previously earned by a servicemember. Of course, this policy can change at any time. A servicemember who considers failing to report should review the section on failure to report to activation of a reserve or National Guard discussed in detail in Chapter 18, “Reasons for Early Discharge or Separation.” Members of the IRR not wanting to take any risk of criminal sanction must either report to duty for their mobilization or seek a delay, deferment, exemption, or separation.

While each service has its own specific procedures and rules for granting delays, deferments, exemptions, and separations, they generally follow a similar template. Under these general guidelines, the ability of any servicemember to receive a delay, deferment, exemption, or separation is left to the discretion of the commanding officer of the call-up unit. Therefore, it is important that servicemembers seeking any modification to their mobilization orders are knowledgeable of the rules and their rights. If you feel you have been wronged by the military and are unable to get your issue resolved with the command, there are additional steps you should take, including filing a complaint with the appropriate inspector general or equal opportunity office, contacting nonprofit, non-governmental organizations that provide information to military members, and consulting various other resources including veterans advocacy groups, military legal assistance officers, and, in some instances, your member of Congress or a private attorney.

### *Delay*

A delay is a change in a servicemember’s initial report date that does not cancel his or her mobilization orders. Delays are usually authorized for two months and are rarely given for longer than four months beyond the initial report date. The military grants delays in several situations including those where the servicemember:

- a. is a new birth mother or new adoptive mother;
- b. is a single parent, or in some instances, a dual military parent;
- c. is facing pending minor criminal charges or confinement;
- d. is hospitalized or is recovering under the direction of a doctor for a temporary health problem; and
- e. has a temporary hardship or personal hardship that would threaten the health, welfare, or safety of another. While there is no exact definition of what constitutes a hardship, it usually involves an extreme financial,

physical, psychological, or emotional problem of one of your family members that requires your active assistance. Examples include: the death or severe illness of a spouse, leaving the servicemember responsible for the care of a child; disability or severe mental illness of a parent; or a serious accident or injury to multiple family members that places important responsibilities on the servicemember.

### *Deferment*

Unlike a delay, a deferment usually requires the cancellation of a servicemember's initial set of mobilization orders even though another set of orders may be issued at a later date. Deferments are generally given when a servicemember's situation is expected to last beyond a few months but is not seen as a permanent limitation. The most common forms of deferment are for medical injuries, illnesses, or family hardships that will extend beyond several months. For example, servicemembers who are battling cancer may receive an extended deferment until they are able to recover from their illness. Similarly, servicemembers dealing with short-term psychiatric conditions are often granted deferments because their disorders and medicines would preclude them from any deployment. (Theoretically, that would cover PTSD from previous deployment.) Likewise, servicemembers attending college, graduate school, or medical residency training often seek deferments until completion of their studies. While these deferments are given much less freely than cases involving hardship or illness, they are still viable options for IRR servicemembers to consider.

### *Exemption*

An exemption occurs when a servicemember's orders are cancelled and will not be re-issued, but the servicemember is still not fully discharged from the military. These instances are very rare because short-term problems usually result in a delay or a deferment while permanent difficulties result in a complete separation. Nonetheless, in rare circumstances exemptions will be given. Currently, servicemembers receive an exemption if they are HIV-positive, or if they are enrolled in divinity or theological school. While each service determines its own policy on exemptions, and these policies can be modified from time to time, exemptions are the exception to the rule and are rarely granted.

## *Separation*

The fourth option preventing a servicemember from being mobilized to active duty is administrative discharge from the military. There are several reasons soldiers can be discharged from the IRR. Most of the reasons for separation from inactive duty mirror the reasons for separation from active duty. These include:

- a. a permanent physical or mental health disability,
- b. a physical or mental condition short of a disability that still interferes with your duty performance, such as a personality disorder, obesity, or allergies,
- c. homosexual conduct,
- d. conscientious objector, pregnancy and childbirth, dependency,
- e. hardship,
- f. the surviving son or daughter of a parent or sibling killed, captured or 100 percent disabled in the line of duty.<sup>11</sup>

## *Approaching the Command*

A servicemember who believes he or she qualifies for a delay, deferment, exemption, or full discharge will find the best result if he or she approaches the command prior to reporting. In some cases, the servicemember ideally should approach the command prior to receiving orders. Nevertheless, approaching the command prior to receiving orders is problematic. First, approaching the command early puts the servicemember on the command's radar. Second, it is often difficult to determine just who is the commander of members of the IRR.<sup>12</sup> In the army, you should be able to identify your IRR command from the army human resources Web site at [https://www.hrc.army.mil/site/Reserve/contact\\_rssc/default.asp](https://www.hrc.army.mil/site/Reserve/contact_rssc/default.asp). To approach the command, the servicemember should first gather evidence and support for the request. Kinds of support to gather are letters from appropriate professionals, family members, and friends; medical or court records; and official records such as birth certificates, marriage licenses, and adoption pa-

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<sup>11</sup> Contrary to popular belief, you no longer need to be a sole surviving son or daughter to request a discharge. Rather, you need only be a surviving son or daughter or even a surviving brother or sister. The only requirement is that someone in your immediate family was killed, captured, missing, or 100% disabled while serving in the armed forces.

<sup>12</sup> The army is attempting to resolve this problem by creating the Individual Warrior system. Currently, there is not enough information about this system to see if it adequately resolves the problem.

pers. More detailed information on kinds of support can be found in Chapter 18, “Reasons for Early Discharge or Separation.”

### *Getting Help*

The Department of Defense and each military service has specific guidance on mobilization and involuntary active duty. In response to the wars in Iraq and Afghanistan, the Army has set up a toll-free **Mobilization Hot Line at (800) 325-4361** that may be able to answer some of your mobilization questions. Additionally, many of the directives and regulations concerning mobilization can be found at [www.defenselink.mil/ra/html/mobilization.html](http://www.defenselink.mil/ra/html/mobilization.html). In the alternative, these regulations can be found by doing an Internet search for the specific service regulation you are looking for. The primary regulations concerning mobilization are below:

[DoD Directive 1200.7](#), Screening the Ready Reserve (November 18, 1999);

[DoD Directive 1235.10](#), Activation, Mobilization and Demobilization of the Ready Reserve (July 1, 1995);

[AR 601-25](#), Delay in Reporting for and Exemption from Active Duty and Active Duty Training (July 15, 1984);

[BUPERS 1001.39 D](#), Administrative Procedures for Naval Reservists on Inactive Duty (February 20, 2001);

[MCRAMM \(MCO P1001R. 1J\)](#), Marine Corps Reserve Administrative Management Manual (March 10, 1999);

[AFI 10-402](#), Mobilization Planning (January 1, 1997);

[AF Manual 36-8001](#), Reserve Personnel Participation and Training Procedures (January 1, 2000).

You should visit [www.veteransforamerica.org](http://www.veteransforamerica.org) and other veterans Web sites. In addition to having an abundance of information on their WebPages, these organizations can help you reach out to other veterans or to veterans groups as well as counseling groups to help ensure you understand your rights and to help assist you in resolving your specific problem.

**Major Brian Baldrate** received his B. S. from the United States Military Academy in 1995. After graduation, he served as Armor officer in the First Cavalry Division. As a scout platoon leader, Brian deployed to Kuwait and trained coalition forces in developing a plan for Kuwaiti national defense while performing reconnaissance and security of the Iraqi-Kuwaiti border. In 2000, Brian earned his J. D. and M. P. A. from the University of Connecticut. He was valedictorian of the law school and editor-in-chief of the *Connecticut Law Review*. Following law school, Brian served as a criminal prosecutor for the Third Armored Cavalry Regiment, where he prosecuted numerous federal felonies including drug distribution, rape, and attempted murder. In 2003, Brian deployed to Iraq as part of *Operation Iraqi Freedom*. There he advised commanders on the laws of armed conflict and led sensitive investigations involving fratricide, war crimes, and allegations of detainee abuse.

Brian received the Bronze Star Medal for his efforts in bringing the first-ever trial before the Central Criminal Court of Iraq and leading efforts to restore the Iraqi judicial system in Anbar Province. Upon returning from Iraq, Major Baldrate earned his LL. M from the U. S. Army Judge Advocate General's School. After spending a year working at the Army's Litigation Division, Brian was detailed to the Department of Justice, first as a trial attorney in DOJ's Civil Division, and currently as a Special Assistant U. S. Attorney in the D. C. United States Attorney's Office.

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