



# HOUSE OF REPRESENTATIVES

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*Testimony of Representative Morgan Rielly introducing*

### **LD 1783, “An Act to Implement the Recommendations of the Governor's Advisory Council on Military Sexual Trauma”**

*Before the Joint Standing Committee on Veterans and Legal Affairs*

Good morning Senator Hickman, Representative Supica, and fellow members of the Joint Standing Committee on Veterans and Legal Affairs. I am Morgan Rielly, and I represent House District 127, which includes part of Westbrook. Thank you for the opportunity to introduce **LD 1783, “An Act to Implement the Recommendations of the Governor's Advisory Council on Military Sexual Trauma”** for your consideration.

The creation of this bill is due in part to past efforts from survivors of military sexual trauma and the advocates who are working to support survivors and hold perpetrators accountable. **LD 1783** is a continuation of what the prior committee started during the 130th Legislature.

To begin to discuss **LD 1783**, we must first review two key bills from the 130th Legislature, now law, that have led to today’s hearing:

- **LD 625**, Resolve, Directing a Review of Crucial Needs and Lapses in Responding to and Preventing Sexual Trauma in the Maine National Guard
- **LD 2029**, An Act To Enhance the Prevention of and Response to Sexual Assault and Sexual Harassment in the Maine National Guard

**LD 625** directed the Maine Adjutant General, our state’s senior military officer, to submit a report outlining current practices and suggesting legislation regarding the investigation, prosecution, and adjudication of sexual assault and harassment cases by members of the Maine National Guard (MENG), along with support for survivors. The report included 14 updates to recommendations originally proposed by the Maine Legislature in 2013. Among them was the proposed creation of an independent review panel to examine sexual assault investigations and

prosecutions. This bill was passed unanimously out of this committee and had MENG report back to the committee with its findings during the second session.

During the Fall of 2021, the Bangor Daily News did a series of articles uncovering military sexual trauma among MENG. The report from MENG regarding **LD 625** and stories of survivors in the media made clear that action was needed, and that an independent investigation was necessary. During a public hearing, survivors courageously shared their stories, and because of their work, **LD 2029**, *An Act To Enhance the Prevention of and Response to Sexual Assault and Sexual Harassment in the Maine National Guard*, was signed into law during the second session of the 130th Legislature.

**LD 2029** directed the Maine Attorney General to review the manner in which law enforcement agencies and prosecutors investigate and prosecute those who have been accused of committing acts of sexual assault and harassment. We heard back from the Attorney General's office earlier this session regarding this report. General Farnham, independently, reached out to the National Guard Bureau's Office of Complex Investigation and we heard back from them this session regarding this report as well, which was requested in **LD 2029**.

**LD 2029** also amended the Maine Criminal Code to recognize legal authority of the orders of military commanders outside of duty times which has helped streamline military and civilian protection orders. And it provided MENG a seat on the Maine Commission on Domestic and Sexual Abuse.

Governor Mills also signed an executive order during the second session of the 130th Legislature establishing the Governor's Advisory Council on Military Sexual Trauma to more effectively prevent, deter, and prosecute sexual assault and sexual harassment. Several members who served on the Advisory Council will be testifying today, and I urge the committee to ask them questions regarding the Council and the report that was published in December of last year. When the Advisory Council reconvenes, I urge the members on the council to look further into addressing issues in culture and harassment.

**LD 1783** implements recommendations from this Advisory Council and takes additional steps to support survivors. Specifically, my bill seeks to accomplish several key areas:

- Annual reports from the Adjunct General regarding aggregate data of demographics, reports, and discharges along with any activities regarding the Governor's Advisory Council on Military Sexual Trauma;
- Establishes paid leave for full-time or part-time members of MENG who report being a victim of a sexual assault or sexual harassment by another member of the MENG and for the respondent;
- It amends requirements of the Victims' Compensation Fund statute to specify that for purposes of awarding compensation, an unrestricted report of sexual assault or sexual

harassment made to MENG by a current or former member of MENG is a crime reported to a law enforcement officer; and

- Appropriates ongoing funds for a military sexual trauma liaison and programming costs.

For this committee and the legislature to make effective policies in addressing military sexual trauma and harassment within MENG along with supporting survivors, we need good data. **LD 1783** asks for a yearly report from the Adjutant General regarding aggregate data that will allow the legislature to have better oversight of MENG, establish stronger trust and transparency with the broader public, and encourage MENG to pursue policies that will improve support for members while in training and off-duty in preventing and holding those accountable for sexual assault and harassment. The Advisory Council stated its intent to explore deeper cultural issues and how those lead to sexual harassment within MENG, providing the Council with data on retention and promotion based on gender will help the Council identify potential areas of growth as it makes further recommendations.

Amending the Victims' Compensation Fund statute will also support MENG survivors. Our Guard members should have access to this fund. While in "State Active Duty" (SAD), Guard members are under the command and control of the Governor and are subject to Maine laws, policies, and rules. Guard members in SAD are protected under Maine's Workers' Compensation Laws and are eligible for benefits and compensation if they are injured, become ill or disabled, or die in the line of duty. This is a crucial and easy amendment to the current statute that will support our Guard members who need to access this fund.

Currently in Maine, Victim's Compensation is limited to those who report to law enforcement. When a Guard member makes an unrestricted report, the Guard is supposed to make a report to local law enforcement. Although this does usually happen, this bill would ensure that reporting to the Guard is sufficient to access Victim's Compensation.

The Advisory Council identified the need for funding for a MST liaison and programming to support MENG in addressing these issues. This will allow for greater community-based coordination in addressing MST.

After speaking with several members on the Advisory Council, we found it necessary to include paid leave for Guard members in **LD 1783**. Last week I submitted to this committee an amendment to clarify this part of the bill. Paid leave pertains only to Guard members who are in State Active Duty (SAD). I've attached to my testimony a chart with the differences between SAD, Title 32, and Title 10.

I understand that there may be some pushback on the portion of the bill that outlines paid leave for the reporting party as well as for the responding party, or an agreed upon alternative. As you can imagine, working alongside the responding party during an ongoing investigation, or even alongside others on your team that may or may not know about the situation, is daunting and not

conducive to a safe working environment. I believe that it is within the best interest of MENG to protect its team members and provide them with the support they need during what may be an incredibly traumatizing and demeaning experience. Further, a paid leave system ensures that the responding party cannot continue their behavior, which would help protect other team members.

In addition, it is important to note that the bill does not mean every reporting party and responding party will be on paid leave during the entire investigation. Rather, it gives the reporting party the right to consult with a victim advocate before agreeing to any proposed plan to have one or both parties return to work. This ensures that survivors feel a sense of agency and understand their rights when making decisions while the investigation is pending.

Currently, Guard members in SAD can be considered state-employees in current state law. As previously mentioned, MENG members qualify for Maine's Workers' Compensation Laws. Guard members also qualify for paid leave for military duty and unemployment insurance. And under the Maine Tort Claims Act under 14 MRSA §8102 defines that "members of the Maine National Guard but only while performing state active service pursuant to Title 37B" qualify for compensation as state employees.

There is also an extensive amount of case law from across the country supporting the application of state laws to SAD status. I've attached a copy of some of these cases with brief summaries to my testimony.

Thank you very much for your time and consideration. I'm happy to answer any questions.

## Attachments

### **Background for National Guard under State Active Duty Status**

#### **General**

The National Guard is the only United States military force that operates across both State and Federal responses, leveraging State Active Duty (SAD), Full-Time National Guard Duty (Title 32) and Active Duty (Title 10). While SAD, Title 32 and Title 10 are different statuses and roles, they provide mutually supporting capability.

#### **State Active Duty (SAD)**

The Governor can activate National Guard personnel to “State Active Duty” in response to natural or man-made disasters or Homeland Defense missions. SAD is based on State statute and policy as well as State funds. Soldiers and Airmen remain under the command and control of the Governor. A key aspect of this duty status is that the Posse Comitatus Act does not apply, giving National Guardsmen the ability to act in a law enforcement capacity within their home state or adjacent state if granted by that state’s Governor.

	<b>SAD</b>	<b>Title 32</b>	<b>Title 10</b>
<b>Command and Control</b>	<b>State Governor</b>	<b>State Governor</b>	<b>President</b>
<b>Who Performs Duty</b>	<b>The Militia</b>	<b>The Federally-recognized militia (i.e., National Guard)</b>	<b>Active Component and National Guard</b>
<b>Where Duty Performed</b>	<b>Continental US in accordance with State Law</b>	<b>Continental US</b>	<b>Worldwide</b>
<b>Pay</b>	<b>In accordance with State Law</b>	<b>Federal Pay &amp; Allowances</b>	<b>Federal Pay &amp; Allowances</b>

From National Guard Association of the United States (NGAUS) Fact Sheet: “Understanding the Guard’s Duty Status,” <https://giveanhour.org/wp-content/uploads/Guard-Status-9.27.18.pdf>

#### **Laws Applying to Maine National Guard Members on State Active Duty (SAD) Status**

While on SAD, Maine National Guard members are under the command and control of the Governor and are subject to Maine laws, policies, and rules.

**Maine National Guard Service Members Covered under Workers' Compensation Laws during State Active Duty:** Maine National Guard Service members serving on state active duty that are injured, become ill, become disabled or die in the line of duty are eligible for benefits and compensation under Maine Workers' Compensation Laws.

**Who is eligible for Maine National Guard Medical covered under Workers' Compensation Laws during State Active Duty?** Maine National Guard Service member injured or killed in the line of duty on state active duty are eligible for compensation and benefits. (<https://www.myairforcebenefits.us.af.mil/Benefit-Library/State/Territory-Benefits/Maine#Employment>)

**Leave for Military Duty for Maine State Employees:** State employees who are Service members in a reserve component of the U.S. Armed Forces receive 17 workdays (per calendar year) paid military leave. This leave can be used for state or federal active duty or to participate in training. If the military service exceeds 17 workdays the employee will be placed on unpaid military leave. Employees may use, but are not required to use, accrued vacation, compensatory, or personal leave when entering an unpaid status.

**Who is eligible for Paid Leave for Military Duty for Maine State Employees?** State employees who are Service members in a reserve component of the U.S. Armed Forces who are on state or federal active duty or attending training are eligible for military leave. (<https://www.myairforcebenefits.us.af.mil/Benefit-Library/State/Territory-Benefits/Maine#Employment>)

**Maine Unemployment Insurance (UI):** UI provides temporary financial assistance for workers that are unemployed through no fault of their own. UI is a partial, short-term replacement of lost wages while workers are seeking other work and is not intended to be a permanent source of income. Benefits are not based on financial need. Employers pay all costs of the UI program.

When applying, applicants will need the following information:

- Social Security Number (Alien Registration Number if applicable)
- Business name, address, telephone number and dates of employment for each place worked during the past 18 months
- Social Security Number of Children that the applicant provided the majority of support

**Who is eligible for Maine UI?** To be eligible for unemployment, applicants must meet the following requirements:

- Lost their job through no fault of their own
- Actively seeking work
- Able and available to work

- Have enough work history and earnings in the past five quarters to be "monetarily eligible"; earned at least \$1,968 per quarter in at least two of the last five quarters, and a total of at least \$5,904 in four of the last five quarters

(<https://www.myairforcebenefits.us.af.mil/Benefit-Library/State/Territory-Benefits/Maine#Employment>)

(26 MRSA, chapter 13, <https://www.maine.gov/unemployment/lawsandrules/index.shtml>)

## **Maine Statutes**

### **37-B MRSA §186. Injuries sustained in connection with military duty**

**1. Compensation as state employee.** A member of the state military forces receives compensation as a state employee according to the provisions of Title 39A and this section.

A. Duty status is as follows.

(1) The types of duty that are covered are:

(a) Active state service as defined by section 101A, whether performed with or without compensation.

(2) The types of duty that are not covered are:

(d) Federal technician civilian duty under the United States Code, Title 32, Section 709; and

(e) Military duty performed pursuant to the United States Code, Title 10.

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B. Types of injuries cognizable are as follows:

(1) The injury, disability or disease must have been received, incurred or contracted while in active state service;

(2) Service members must be under the control and supervision of the military. Incidents occurring during periods of leave or pass are not compensable; and

(3) An injury, disability or disease received not incident to duty or contracted with willful negligence or misconduct is not compensable. [PL 2001, c. 662, §24 (AMD).]

C. Preconditions for benefits under Title 39A are as follows:

(1) Federal income maintenance benefits must be applied for and, if they exceed comparable Title 39A benefits, must be exhausted by the member before receiving weekly compensation benefits under Title 39A. Medical care at military or Veterans' Administration facilities, civilian care paid for by the military forces and other benefits furnished by the military force or the Veterans' Administration, including military programs offered to retrain or occupationally rehabilitate the service member, must be used before entitlement to benefits under Title 39A. Military programs are fully creditable under Title 39A in an approved plan of rehabilitation; and

(2) Title 39A benefits are based on inability to perform the service member's usual

occupation. [PL 2001, c. 662, §24 (AMD).]

D. For the purpose of calculation of compensation, average weekly wage must be computed solely on the earning capacity of the injured member in the occupation in which that member is regularly engaged. In case of death, dependents are entitled to compensation as provided in Title 39A and any amendments to that Title. [PL 2001, c. 662, §24 (AMD).]

E. If the member is eligible for military or Veterans' Administration care and knowingly declines or through the member's actions forfeits rights to federal care benefits, the member is not entitled to compensation for civilian care under Title 39A. [PL 2001, c. 662, §24 (AMD).]

F. All federal benefits received by the member as a result of an injury, disability or disease are considered to be derived from the employer and constitute a setoff to compensation awarded as a result of this section. A dollar-for-dollar setoff is authorized for all benefits to include continuation of federal pay and allowances, incapacitation pay, severance pay, disability retirement pay, Veterans' Administration disability payments and military and Veterans' Administration death benefits. [PL 2001, c. 662, §24 (AMD).]

G. Reporting pursuant to Title 39A does not have to be initiated until a final decision is reached on the injured service member's entitlement to federal benefits or while military or veterans' disability benefits are received in lieu of compensation under Title 39A, whichever ceases first. Veterans' disability benefits provided in this subsection include state military duty pay received under section 143, federal continuation pay or incapacitation pay in lieu of benefits under Title 39A. The time provisions of Title 39A commence upon notification to the service member that federal benefits are not authorized, or the gross monetary federal benefits are determined to be less than the entitlements under Title 39A without taking into account the setoff prescribed in paragraph E. [PL 2001, c. 662, §24 (AMD).]

### **37-B MRSA §101-A. Definitions**

- 1. Active state service.** As used in this Title, "active state service" means all military duty performed as a member of the state military forces pursuant to this Title or the United States Code, Title 32.
- 2. Military forces.** "Military forces" means the state military forces, as defined in section 102.
- 3. State military welfare society.** "State military welfare society" means a nonprofit agency composed primarily of serving or former Maine Army National Guard or Maine Air National Guard members established to solicit and accept donations for the purpose of providing emergency financial relief to members of the state military forces. A state military welfare society may be the same organization as a military welfare society as defined in 10 United States Code, Section 1033(b)(2).

### **37-B MRSA §102. Composition**

- 1. State military forces.** The state military forces shall consist of:



A. The Maine Army National Guard and the Maine Air National Guard, referred to in this Title as the "National Guard," when either or both are not in federal service and state military forces provided under section 3, subsection 1, paragraph D, subparagraph (22), but not the Maine Military Authority; and

B. The militia, the naval militia and the Maine State Guard when and if organized by direction of the Governor pursuant to the authority set forth in subchapter IV.

### **37-B §143. Pay and allowances**

**1. Pay and allowances.** Subject to subsection 2 and section 150, members of the Maine National Guard ordered to active state service under section 181A, subsections 1 to 5 are entitled to receive at least the same pay and allowances as would be payable to those persons from the United States Armed Forces. Such pay may not be less than pay based upon 12 hours a day at the state minimum wage.

**2. Cooperative agreement pay and allowances.** Members and retired members of the Maine National Guard called to active state service under section 181A, subsection 5 in support of a cooperative agreement with the Federal Government are entitled to receive the same pay and allowances as would be payable to those persons from the United States Armed Forces, but not more than the pay and allowances payable in accordance with the terms of the cooperative agreement. Pay may not be less than pay based upon 12 hours a day at the state minimum wage.

### **14 MRSA c. 741 -ME Tort Claims Act**

#### **14 MRSA §8102. Definitions**

1. Employee. "Employee" means a person acting on behalf of a governmental entity in any official capacity, whether temporarily or permanently, and whether with or without compensation from local, state or federal funds, including elected or appointed officials; volunteer firefighters as defined in Title 30A, section 3151; emergency medical service personnel; members and staff of the Consumer Advisory Board pursuant to Title 34B, section 1216; members of the Maine National Guard but only while performing state active service pursuant to Title 37B; sheriffs' deputies as defined in Title 30A, section 381 when they are serving orders pursuant to section 3135; and persons while performing a search and rescue activity when requested by a state, county or local governmental entity, but the term "employee" does not mean a person or other legal entity acting in the capacity of an independent contractor under contract to the governmental entity.

#### **Maine Policies and Procedures**

### **DEPARTMENT OF VETERANS AND EMERGENCY MANAGEMENT POLICY & PROCEDURE STATEMENTS**

#### **DVEM Policy and Procedure Statement 19-04 - 3. POLICY PROHIBITING SEXUAL HARASSMENT**

As a matter of State policy, any behavior of a sexual nature in the workplace is considered unprofessional regardless of whether it constitutes illegal sexual harassment.

5. Complaint Process. The State of Maine is committed to preventing harassment prohibited by this policy through education and dissemination of information as well as employee accountability. Such harassment may be reported by any employee, regardless of whether that employee is the recipient of the harassment, a witness or otherwise becomes aware of harassment prohibited by this policy. Internal complaints may be filed by contacting any of the following individuals: Immediate supervisor or any supervisor/manager in the chain of command; Departmental EEO Officer; Departmental Human Resource Manager.

In addition to initiating the internal complaint procedure, employees covered by collective bargaining agreements may file a grievance through the applicable grievance procedure. A discrimination complaint alleging harassment on the basis of sex, race, color, religion, national origin, age or physical or mental disability may also be submitted to the Maine Human Rights Commission at any time within 180 days of the alleged discriminatory incident. It is not required that any of the above procedures be utilized first or in any sequence, nor is it required that any procedure be exhausted before the other is used.

<https://www.maine.gov/dvem/policies/index.html>

## **MAINE BUREAU OF HUMAN RESOURCES HUMAN RESOURCES POLICY AND PRACTICES MANUAL**

### **12.4 MILITARY LEAVE**

Reference *Civil Service Rules*, Ch. 11, Sec. 2, E. Employer requirements and employee rights associated with leave for military service are found in the federal *Uniformed Services Employment and Reemployment Rights Act of 1994* (U.S. Code Title 38, Ch. 43), and various Maine statutes. It is also important to consult the Military Leave articles of the collective bargaining agreements.

State employees must be granted military leave to enter military service or participate in training, whether voluntarily or involuntarily, in peacetime or in wartime. The type and duration of military duty will determine whether the employee remains in pay status.

**MILITARY LEAVE WITH PAY** Employees (including employees who hold acting capacity and project appointments) are allowed up to 17 work days in each calendar year without loss of pay or benefits when engaged in any form of military duty.

**MILITARY LEAVE WITHOUT PAY** When military service exceeds the 17 work days authorized for military leave with pay, the employee must be placed on unpaid military leave. Employees may use, but are not required to use, accrued vacation, compensatory, or personal leave when entering unpaid military service. Provisions for the optional use of accrued vacation, compensatory, or personal leave also apply to employees who are called to active state duty by the Governor.

**RE-EMPLOYMENT:** The guiding principle of the USERRA and Maine law is that an employee performing military service is not to suffer any detriment in employment and should be treated as if he or she had not left employment. State employees who enter military service retain reemployment rights under both the *Uniformed Services Employment and Reemployment Rights Act of 1994* and Maine law. Exceptions are narrowly restricted to persons who hold temporary, non-recurrent employment. Although certain criteria are required for an employee to exercise his or her reemployment rights, denial of reemployment to a returning service member should be considered an extraordinary situation. Human resource professionals should be consulted if any adverse action is contemplated.

An employee who enters military service on a short-term basis would generally be returned to the position that he or she left. Employees who enter military service on a long-term basis would be returned to the position that he or she left or be returned to a position of like status and pay for which he or she is qualified. Agency human resource representatives should be consulted if denial of reemployment for any reason is contemplated.

Upon the completion of service (less than 31 days, including weekend drills) employees are also entitled to reasonable time for return travel, and an eight-hour period of rest, before returning to work. The allotted time to apply for reemployment increases incrementally, depending upon the length of service. Departmental human resource representatives should be consulted in unusual situations.

<https://www.maine.gov/bhr/state-hr-professionals/rules-policies/policy-practices-manual>

#### **Case Law Supporting Application of State Laws to SAD Status**

- *Lockett v. New Orleans City*, 639 F. Supp. 2d 710 (E.D. La. 2009)

Finding that the Louisiana Air National Guard was an arm of the state entitled to Eleventh Amendment immunity

- *Schible v. United States*, CAUSE NO. 1:12-CV-59 (N.D. Ind. Jun. 25, 2012)

The United States contends that Eleventh Amendment immunity would apply to the ING and ONG because they are state agencies...Indeed, the Seventh Circuit Court of Appeals has so held. *See Meadows v. Indiana*, 854 F.2d 1068, 1069 (7th Cir. 1988) (holding that the Eleventh Amendment barred a § 1983 action against all of the Defendants, including the ING); *see also Knutson v. Wis. Air Nat'l Guard*, 995 F.2d 765, 767 (7th Cir. 1993) ("In each state the National Guard is a state agency, under state authority and control.").

- *Bryant v. Military Department of State*, 381 F. Supp. 2d 586 (S.D. Miss. 2005), <https://casetext.com/case/bryant-v-military-department-of-state/case-summaries>

Concluding that the Mississippi Air National Guard was a state agency entitled to Eleventh Amendment immunity

- *Krause v. Pennsylvania Department of Military & Veterans Affairs*, CIVIL ACTION NO. 1:11-CV-1080 (M.D. Pa. Dec. 22, 2011)

The Pennsylvania Department of Military and Veterans Affairs is a *state agency*, not a state official. In fact, in *Helfrich v. Pa. Dep't of Military Affairs*—the case cited by Krause in support of her position—the Third Circuit affirmed the district court's dismissal of Pennsylvania Department of Military and Veterans Affairs pursuant to the Eleventh Amendment. 660 F.2d 88, 89-90 (3d Cir. 1981).

- *Kise v. Department of Military & Veterans Affairs*, 574 PA. 528/832 A.2d 987 (Sept. 2003)

In this appeal, we consider the availability and appropriate breadth of state appellate review of a military personnel action in the form of an involuntary separation for cause from the "Active Guard/Reserve" program of the Army National Guard and Army member of the National Guard of the United States ("NGUS") and the Pennsylvania Army National Guard ("PAARNG"), on full-time active service pursuant to

Section 502(f), Title 32, of the United States Code, 32 U.S.C. § 502(f), as part of the Active Guard/Reserve ("AGR") program.

Effective in May of 2000, Kise was separated from AGR service for cause (asserted misconduct) by order of the Adjutant General of Pennsylvania (the "Adjutant General"), following an investigation conducted pursuant to the provisions of AR 15-6, and National Guard Regulation ("NGR") 600-5.

The members of the State Guard . . . must keep three hats in their closets -- a civilian hat, a state militia hat, and an army hat -- only one of which is worn at any particular time.")). The majority observed that most duty assignments performed by National Guard members (weekend drills, annual training, and most training and other assignments within the United States), denominated "Title 32 duty," is undertaken in a state status directed by the Governor, albeit that it is paid for with federal funds. See *Kise*, 784 A.2d at 255 (citing Maj. Grant Blowers, et al., *Disciplining the Force - - Jurisdictional Issues in the Joint and Total Force*, 42 A.F.L. REV. 1, 8 (1997)). Furthermore, it distinguished strictly federal service that is ordered by the President or the Secretary of the Army under the authority of federal laws, "Title 10 duty," such as basic military training, overseas training missions, and mobilization of the National Guard by the United States Government. See *id.*

The Commonwealth Court majority concluded that Kise's status in the AGR was as a member of the state militia and not as a federalized soldier; therefore, at the time of his discharge, Kise was a state employee.

- *Monaghan v. County of Gloucester*, 599 F. Supp. 3d 196 (D.N.J. 2022)

The Court finds that based on the record, the December 5, 2013, training day was pursuant to the authority of state law, such that it falls outside the ambit of protected military service

under USERRA. ...only "National Guard service under Federal authority is protected by USERRA," and National Guard service pursuant to Federal authority "includes duty under Title 32 of the United States Code, such as active duty for training, inactive duty training, or full-time National Guard duty." 20 C.F.R. § 1002.57(a). By contrast, National Guard service, including inactive duty training, "under authority of State law is not protected by USERRA." *Id.* § 1002.57(b). Thus, the Court finds that the distinction is clear—inactive duty training by the New Jersey National Guard is covered by USERRA *only* when it is performed pursuant to federal authority.