

Number 24, April 2001:
Enforcement of Reemployment Rights Outside the U.S.

By CAPT Samuel F. Wright, JAGC, USNR*

Q: I have enjoyed your "Law Review" articles, especially those concerning the Uniformed Services Employment and Reemployment Rights Act (USERRA) (topics 4-12 and 18). [Note: All of the "Law Review" articles are available on ROA's web site.] I am the National Councilman for ROA's Department of Europe. I was employed as a lawyer in Europe on active duty, as a civilian employee of the U.S. Government, and as a lawyer with a German law firm. I am aware that many ROA members and other Reservists employed in Europe in recent years have had problems with their civilian employers about Reserve service in the U.S. Armed Forces. Does USERRA apply outside the United States? Colonel Jerry E. Shiles, USAR.

A: Yes, under a 1998 amendment to USERRA. The amendment was signed into law by President Clinton on 11 November 1998 (Veterans' Day). It applies to situations arising on or after that date. It is not retroactive.

The 1998 amendment enacted a new section in USERRA, section 4319 of Title 38, United States Code (38 U.S.C. 4319). If a U.S. employer controls an entity that is incorporated or otherwise organized in a foreign country, any denial of employment, re-employment, or benefit by such foreign entity shall be presumed to be by the U.S. employer. [38 U.S.C. 4319(a)].

Q The Belgian subsidiary of a major U.S. corporation has contended that it is not required to allow its employees time off for service in the U.S. Armed Forces because Belgian law does not require this. Is the employer correct?

A: No, unless Belgian law actually forbids that which USERRA requires. If the law of the host nation forbids an employer from doing the act that is required by USERRA (such as reinstating an employee returning from service in the U.S. Armed Forces), the employer is exempted from the requirement. [See 38 U.S.C. 4319(d)].

Q: How would USERRA be enforced outside the United States?

A: By a lawsuit against the U.S. corporation or entity. The suit would be filed in the United States District Court for any district in which the U.S. employer maintains a place of business. [See 38 U.S.C. 4323(c)(2)]. USERRA's enforcement mechanism is discussed in detail in "Law Review" Number 12 (November 1999).

Q: Can anything be done for U.S. Reservists who are employed in Europe by European companies?

A: Probably not. USERRA does not apply to the foreign operations of a

foreign employer that is not controlled by a U.S. employer. [See 38 U.S.C. 4319(b)].

CAPT Walter K. Steiner, USNR, ROA's Director of Naval Services Affairs, is working through CIOR to get our NATO allies to enact laws similar to USERRA and to establish a principle of reciprocity within the NATO alliance on this point. That is likely to be a very long-term effort.

*Military title used for purposes of identification only. The views expressed herein should not be attributed to the Department of the Navy or the U.S. Government generally.

Captain Wright recently completed his service on the ROA staff, but he will be continuing this column. You can write to him at ROA, or you can send him an e-mail at swright@roa.org.