

Number 52, September 2002: USERRA COVERAGE OF THE NOAA CORPS

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Q: In "Law Review Number 46" (June 2002), you reported that the Uniformed Services Employment and Reemployment Rights Act (USERRA) applies to the commissioned corps of the Public Health Service (PHS) but not to the commissioned corps of the National Oceanic and Atmospheric Administration (NOAA). You also wrote, "NOAA was intentionally excluded from USERRA, but that is another story." I am a member of ROA and a NOAA officer. I want to hear that story.

A: When I was employed as an attorney for the U.S. Department of Labor, I served on an interagency task force that reviewed the Veterans' Reemployment Rights (VRR) law and prepared a draft that became (with some changes by Congress) USERRA. I largely wrote that draft with one other DoL attorney.

Our task force work product was presented to Congress, as the proposal of the first Bush Administration, in February 1991. What finally was enacted in October 1994 is similar but not identical to our work product. One of the changes relates to the coverage of "uniformed services."

Our task force work product used the "uniformed services" definition contained in 10 U.S.C. 101(a)(5). That definition includes the five armed forces (Army, Navy, Marine Corps, Air Force, and Coast Guard) plus the PHS corps and the NOAA corps. During the spring of 1991, the staff of the Senate Veterans' Affairs Committee informed me that Sen. Alan Cranston (then chairman of the committee) was opposed to including PHS and NOAA in USERRA. The staffers told me that Senator Cranston thought that the traditional veterans' organizations would oppose expanding the class of persons who could call themselves "veterans." I explained that our draft did not use the word "veteran." Our draft merely accorded re-employment rights to a person who had performed "service in the uniformed services." My argument did not carry the day.

I contacted the leadership of both PHS and NOAA to explain the problem. The PHS leadership contacted Senator Cranston and asked to be included, and they were included. The NOAA leaders were unwilling to get involved, so that service was not included. That is how USERRA came to have its own unique definition of "uniformed services," which includes PHS but not NOAA. --ROA

* Military title used for purposes of identification only. The views expressed in these articles are the personal views of the author and are not necessarily the views of the Department of the Navy, the Department of Defense, the Department of Defense or the U.S. government.