

LAW REVIEW 940

(OCTOBER 2009)

CATEGORY: 1.1.1.3—Application of USERRA to Religious Institutions

The Ordinance and the Ordained—Part Two

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“A Ministry Care Plan for Southern Baptist Churches and Ministers Serving As Reserve Component Chaplains” by Chap. (MAJ) Jay Padgett, ARNG,
View plan on the namb web site: www.namb.net/site/pp.aspx?c=9qKILUOzEpH&b=503118@printmode=1

The Uniformed Services Employment and Reemployment Rights Act (USERRA) applies to almost all employers in this country, including the federal government, state and local governments, and private employers, regardless of size. One significant exception to the universal applicability of USERRA is that, because of the religion clauses of the First Amendment to the U.S. Constitution, it is not possible to apply a law like USERRA to the pervasively religious relationship between a religious institution (church, synagogue, mosque) and an ordained employee (minister, priest, rabbi, imam).

I invite the reader’s attention to Law Review 185 (Sept. 2005), titled “Does USERRA Apply to Religious Institutions?” and Law Review 0859 (Dec. 2008), titled “The Ordinance and the Ordained.” All previous Law Review articles (more than 600) are available at www.roa.org/law_reviews.

Most, but certainly not all, Reserve Component chaplains are employed in ordained positions for churches, seminaries, synagogues, mosques, and other religious institutions. Because they cannot go to court to enforce their reemployment rights, it is all the more important that Reserve Component chaplains maintain positive relationships with their civilian employers and make plans for the eventuality (now almost a certainty) of mobilization.

I want to bring to the reader’s attention an article written by Chap.(MAJ) Jay Padgett, ARNG, a member of the Kentucky Army National Guard and a Baptist minister in Kentucky. His article makes recommendations for Reserve Component chaplains and the churches they serve. His article is written in the context of his own Southern Baptist denomination, but his suggestions are applicable regardless of denomination.

His article contains an interesting discussion of the role of chaplains in the U.S. military, from the Civil War to the Global War on Terrorism. He also cites alarming statistics about the shortage of chaplains in the Reserve Components, which has resulted in chaplains being deployed multiple times, both with their own units and after being cross-assigned to other units that otherwise would have to deploy without a chaplain. Chap. Padgett himself deployed to Iraq with the 234th Signal Battalion of the Iowa Army National Guard.