

LAW REVIEW 1076

Congress Strengthens USERRA's Protection against Discrimination

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1.2—USERRA-Discrimination Prohibited

"The term 'benefit', 'benefit of employment', or 'rights and benefits' means any advantage, profit, privilege, gain, status, account, or interest (*other than wages or salary for work performed*) that accrues by reason of an employment contract or agreement or an employer policy, plan, or practice and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or location of employment." 38 U.S.C. 4302(2), as enacted by Public Law 103-353 (USERRA) on October 13, 1994 (emphasis supplied).

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On October 13, 2010, President Obama signed into law the Veterans' Benefits Act of 2010 (VBA-2010), Public Law 111-275. This important new law makes several welcome amendments to the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Servicemembers Civil Relief Act (SCRA).

In 2002, the United States Court of Appeals for the 8th Circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota) held that the "other than salary or wages for work performed" language precluded a plaintiff's claim that paying him a lower starting salary based on his previous military service violated the Uniformed Services Employment and Reemployment Rights Act (USERRA). *Gagnon v. Sprint Corp.*, 284 F.3d 839, 852-53 (8th Cir. 2002).

Section 701 of VBA-2010 amended "other than" to "including." This is a significant and welcome change. The apparent purpose is to overrule *Gagnon*.

Section 4311 of USERRA provides: "A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation." 38 U.S.C. 4311(a) (emphasis supplied).

A statute's definition of a word or phrase controls for purposes of that statute. Section 4303 of USERRA defines 16 terms, including the term "benefit." By broadening the definition of "benefit" Congress has broadened section 4311's protection against discrimination.