

Law Review 1161

Training Federal HR Personnel on USERRA

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1.1.1.8—USERRA Applicability to Federal Government

§ 4335. Training for Federal executive agency human resources personnel on employment and reemployment rights and limitations

(a) Training Required.— The head of each Federal executive agency shall provide training for the human resources personnel of such agency on the following:

(1) The rights, benefits, and obligations of members of the uniformed services under this chapter.

(2) The application and administration of the requirements of this chapter by such agency with respect to such members.

(b) Consultation.— The training provided under subsection (a) shall be developed and provided in consultation with the Director of the Office of Personnel Management.

(c) Frequency.— The training under subsection (a) shall be provided with such frequency as the Director of the Office of Personnel Management shall specify in order to ensure that the human resources personnel of Federal executive agencies are kept fully and currently informed of the matters covered by the training.

(d) Human Resources Personnel Defined.— In this section, the term “human resources personnel”, in the case of a Federal executive agency, means any personnel of the agency who are authorized to recommend, take, or approve any personnel action that is subject to the requirements of this chapter with respect to employees of the agency.

Title 38, United States Code, Section 4335 (38 U.S.C. 4335).

Congress enacted the Uniformed Services Employment and Reemployment Rights Act (USERRA) in 1994 (Public Law 103-353), as a long-overdue rewrite of the Veterans’ Reemployment Rights Act (VRRA), which dates back to 1940. USERRA is codified in Chapter 43 of Title 38 of the United States Code (U.S.C.).

USERRA applies to almost all employers in this country, including the Federal Government, state and local governments, and private employers, regardless of size. USERRA’s very first section expresses the “sense of Congress that the Federal Government should be a model employer in carrying out the provisions of this chapter.” 38 U.S.C. 4301(b).

Congress has amended USERRA in 1996, 1998, 2000, 2004, 2008, and 2010. The 2008 amendment added section 4335, which is quoted in its entirety above. Although this section has been included in the law for three years, it has not been implemented in good faith by the Office of Personnel Management (OPM) and federal agencies generally. OPM

has provided a perfunctory on-line training course for federal human resources personnel, on USERRA, but this on-line course is not a sufficient compliance with section 4335, in my opinion. Congress added section 4335 to USERRA because it was most impatient with reports of federal agencies, as employers, flouting USERRA. I have attended congressional hearings, and I have heard Senator John Tester (Montana) and other legislators express that irritation with federal agency USERRA scofflaws.

Every day, and well into the evening on Thursday s[1], I hear from National Guard and Reserve members (many of them federal employees) complaining about clear and egregious USERRA violations by employers and supervisors. USERRA is 17 years old, and the underlying reemployment statute is 71 years old, but there is still immense ignorance about this law among employers and supervisors. The Federal Government and other employers need to do much better in ensuring compliance by training supervisors and human resources professionals.

I have set out to do much of that training myself. I invite your attention to www.servicemembers-lawcenter.org. You will find more than 800 articles about USERRA and other laws that are directly pertinent to those who serve our nation in uniform. You will also find a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. I initiated the "Law Review" in 1997, and we add one or two new articles each week.

I have been dealing with the VRRRA and USERRA for almost 30 years, in one capacity or another. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the interagency task force work product that President George H.W. Bush presented to Congress, as his proposal, in February 1991. What Congress enacted in October 1994 was about 85% the same as the Webman-Wright draft.

I have also dealt with USERRA and the VRRRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the National Committee for Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), and as an attorney in private practice. In June 2009, I retired from private practice and joined the full-time staff of the Reserve Officers Association (ROA), as the first Director of the Service Members Law Center (SMLC).

As the SMLC Director, I receive and respond to 400-500 inquiries per month, mostly by e-mail and telephone, about USERRA and other military-related laws. The big majority of the inquiries are from National Guard and Reserve service members, and I also receive a significant number of inquiries from attorneys. Only very occasionally (perhaps once or twice per month) do I hear from employers (federal, state, local, or private sector). But I want to emphasize that the SMLC is certainly available to employers—we provide information, at no charge, that is not available anywhere else.

I am also available to conduct training for employers, including federal agencies, on USERRA compliance. I will not teach employers how to disguise or cover up USERRA violations.

[1] I want to make it possible for Reserve Component personnel to call me, to ask questions about their rights with respect to their civilian employers, without having to call from work or during work hours. Accordingly, I am here answering the telephone (800-809-9448, ext. 730) until 10 pm Eastern Time every Thursday. This is in addition to my regular hours of 8 a.m. to 4 p.m. on weekdays. Thursday evening is a good time to call me.