

LAW REVIEW 1255

May 2012

A Small Sacrifice Is Asked of the 99.25%

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1.4—USERRA Enforcement

1.8—Relationship between USERRA and other Laws/Policies

Here at ROA headquarters, the treasured Minuteman Memorial Building, we have the Minuteman Statue—donated to ROA by Brigadier General and Mrs. Roger L. Zeller as a memorial to Lieutenant Edwin F. Dietzel. The statue sits on a marble pedestal. On the pedestal, these words are inscribed: “Each citizen of a free government owes his services to defend it.” Those words are attributed to General George Washington in 1783.

For most of our nation’s history, we had a tiny standing Army of professional career soldiers, and a Navy that was only slightly larger. When conflict arose, the standing Army was quickly supplemented by calling up state militia forces, the citizen soldiers of that era. For a major military conflict, our nation established a draft and conscripted young men into service. This pattern held for the Civil War, World War I, World War II, the Korean War, the Vietnam War, and the first 28 years (1945-73) of the Cold War competition with the Soviet Union.

All of that changed in 1973, when Congress abolished the draft. Today, the United States military, Active Component and Reserve Component, is the best motivated, best trained, best led, best equipped, and most effective military in the world, and perhaps in the history of the world. Few in today’s military would contemplate returning to the draft. The vast majority of our population is not asked to participate in the defense of the nation, beyond the payment of taxes.

Today’s military establishment, including the National Guard and Reserve, amounts to less than 3/4 of 1% of the U.S. population. Somewhat a tradition for some, it is largely the same families who serve, from one generation to the next. In the 11 years since the September 11 terrorist attacks, service academy alumnae publications are full of photographs of inter-generational family reunions in Iraq and Afghanistan.

In a speech to the House of Commons on August 20, 1940, Prime Minister Winston Churchill said:

The gratitude of every home in our Island, in our Empire, and indeed throughout the world, except in the abodes of the guilty, goes out to the British airmen who, undaunted by odds, unwearyed in their constant challenge of mortal danger, are turning the tide of world war by their prowess and their devotion. Never in the field of human conflict was so much owed by so many to so few.

Prime Minister Churchill’s paean to the Royal Air Force in the Battle of Britain applies equally to the United States military in the Global War on Terrorism. It is these few, these hardy

few, who have prevented a recurrence of the horrors of September 11, by their prowess and their devotion.

According to the Department of Defense, 848,133 National Guard and Reserve personnel have been called to the colors since September 11, 2001, our generation's "date which will live in infamy." Some have been called five or more times, and their civilian employers are tired of the "burden" and seek to shed the burden by flouting the Uniformed Services Employment and Reemployment Rights Act (USERRA).

To our nation's employers—I say that your burdens, while not inconsiderable, pale in comparison to the burdens, and sometimes the ultimate sacrifice, made by those in uniform. Because our country abolished the draft 39 years ago, we are not calling you to involuntary military service, and we are not calling your sons or daughters. That entire burden is borne by that tiny sliver of the population that volunteered to serve, in the Active Component or the Reserve Component. Employers—do not complain about the burden on you—honor and celebrate the much greater burden voluntarily undertaken by those who serve.

The reemployment statute is not new—it is 72 years old. It was originally enacted in 1940, as part of the Selective Training and Service Act, the law that led to the drafting of millions of young men, including my late father, for World War II. A year later, as part of the Service Extension Act of 1941, Congress expanded the reemployment provision to make it apply to voluntary enlistees as well as draftees. Congress strengthened the law when it enacted USERRA in 1994, but you should think of this law as 72 years old, not 18. This law is an integral part of the fabric of our society.

As the Director of the Service Members Law Center (established by ROA in 2009), I am here during regular business hours and until 10 p.m. Eastern Time on Thursdays^[1] answering questions, by e-mail and by telephone, from service members, military family members, employers, attorneys, congressional staffers, reporters, and others, about military-legal topics. In the month of April alone, I received and responded to 815 inquiries, and more than half of them were about USERRA.

[1] The point of the Thursday evening availability is to make it possible for National Guard and Reserve personnel to call me from the privacy of their own homes, outside their civilian work hours. No other organization offers this late-night availability.