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Don't Use your Employer's Computer for Navy Reserve Work

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1.2—USERRA forbids discrimination

1.8—Relationship between USERRA and other laws/policies

Q: I am a Navy Reserve petty officer and I serve as the “schools coordinator” for the unit. This means that unit members call me with problems and issues concerning their annual training in the Navy Reserve. I contact various Navy commands to work those problems out. Of course, the Navy commands are only available by telephone during regular work hours. Accordingly, it is necessary that I call these Navy commands from my civilian job. I also regularly use the employer’s computer (on my desk at work) to send Navy e-mails, using my CAC card.

My boss found out about my use of the employer’s computer—he saw my CAC card and closely questioned me about that card. He gave me a written notice that I am not to use the employer’s computer for Navy Reserve work, even outside my work hours or during my lunch break. I think that my boss is not aware of my use of the telephone for the Navy.

An officer in my Navy Reserve unit told me that you are the “USERRA guru.” Please help. I cannot perform my “schools coordinator” assignment without making telephone calls and sending e-mails from work.

A: I strongly advise you to take the employer’s warning on board and to cease all Navy Reserve work on the employer’s time or equipment. USERRA gives you the right to *time off from your job* (without pay) to do your Navy Reserve work. This law does not give you the right to do military work while on the clock at the civilian job, and it certainly does not give you the right to use the employer’s equipment and supplies for military work.

I invite your attention to *Escher v. BWXT 7-12 LLC*, 627 F.3d 1020 (6th Cir. 2010).¹ I discuss the *Escher* case in detail in Law Review 1054.²

I suggest that you contact your Navy Reserve Commanding Officer (CO) and tell him/her that you cannot continue to perform this “schools coordinator” assignment because it is putting your civilian job at serious risk. If the CO has a problem with this, tell him or her to call me at 800-809-9448, extension 730. I have also brought this matter to the personal attention of VADM Robin Braun, the Chief of Navy Reserve, and MG Ronald Young, the Executive Director of Employer Support of the Guard and Reserve (ESGR). Yes, I really think that this issue is that important.

¹ The citation means that you can find this case in Volume 627 of *Federal Reporter Third Series*, starting on page 1020. This is a decision of the United States Court of Appeals for the 6th Circuit, just one step below the Supreme Court. The 6th Circuit is the federal appellate court that sits in Cincinnati and hears appeals from district courts in Kentucky, Michigan, Ohio, and Tennessee. The 6th Circuit upheld the decision of the United States District Court for the Eastern District of Tennessee, that Navy Reserve Captain Rudolph N. Escher, Jr. was lawfully fired by his civilian employer for using the employer’s resources and time to do Navy Reserve work.

² I invite the reader’s attention to www.servicemembers-lawcenter.org. You will find 879 articles about USERRA and other laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. I initiated this column in 1997, and we added 122 new articles in 2012.

This is not the first case I am aware of involving a reservist getting into serious trouble for using employer time and equipment in activities related to a reserve component unit. My advice is simple: *Don't do it!* Do not give members of your unit your work telephone or work e-mail. Do not make or accept telephone calls at work that are related to your reserve unit, even if you are the commanding officer. Reserve Centers and Operational Support Centers and National Guard Armories: *Do not conduct recall exercises during civilian work hours.* Do not call reserve component members (not presently on active duty) at their civilian jobs, unless it is a real mobilization and you need to contact them immediately to order them to report. If you need routine access to the individual during work hours, you must put that individual on military orders for the entire day, and the individual must take time off from the civilian job.

In the 12 years since the terrorist attacks of September 11, 2001, the transformation of the strategic reserve to the operational reserve has been completed. Employers are increasingly angry about repeated, lengthy mobilizations and voluntary active duty tours, on top of the traditional drill weekends and annual training. USERRA protects all these activities, and we can tell the civilian employer that it must accommodate these absences from work to perform uniformed service. The employer does have the right to insist that when you are on the clock at the civilian job you are concentrating solely on your civilian job responsibilities, not your reserve component responsibilities. I cannot overstate the importance of keeping your military activities separate from your civilian job hours.

Q: It is not fair! Many of my colleagues at work routinely use their work computers to access non-work e-mail systems, like Yahoo and g-mail. I think that I am being singled out because I used the work computer for the Navy. This ought to be a violation of USERRA.

A: When an employer establishes a work rule (like don't use your work computer for non-work activities) the employer does not have to be perfect in detecting violations in order to punish those violations that it does detect. O.J. Simpson got away with murder. That does not mean that murder is now lawful.

You do not know the extent to which your employer is aware that other employees are using their work computers for non-work activities. Also, it is entirely possible that other employees have received written warnings similar to the warning that you received. Such warnings are normally confidential.