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Rand Corporation Study Reports Employer Ignorance on USERRA— Let Them Call the Service Members Law Center

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1.0—USERRA generally

Employer Support of the Guard and Reserve (ESGR) is the Department of Defense organization (established in 1972) that seeks to gain and maintain the support of civilian employers (federal, state, local, and private sector) for the men and women of the National Guard and Reserve. ESGR recently commissioned the Rand Corporation to study the Uniformed Services Employment and Reemployment Rights Act (USERRA), the burdens placed on civilian employers by the transformation of the Reserve Components (RC) from a strategic reserve (available only for World War III) to an operational reserve (routinely called upon for military contingencies like Iraq and Afghanistan), and employer approaches and attitudes to these issues.

The Rand Corporation report contains many interesting and useful findings, one of which is that 25% of employers of RC members admit not knowing all they need to know, including their obligations to the employee who is called to the colors and where to go for assistance, in order to comply with the law. To this I say, let them call the Service Members Law Center (SMLC), of which I am the Director (since June 2009, when we established the SMLC).

I am available by e-mail at SWright@roa.org and by telephone at 800-809-9448, extension 730. I am here at my post answering calls and e-mails during regular business hours and until 10 pm Eastern Time on Mondays and Thursdays.^[1] Especially on those two days, I am available to employers anywhere in our country (from Puerto Rico to Guam) during their business hours. There is no charge for this service.

Each month, I receive and respond to approximately 800 e-mails and calls from service members, military family members, employers, attorneys, ESGR volunteers, Department of Labor (DOL) investigators, congressional staffers, reporters, and others. Approximately half of the inquiries are about USERRA, and the other half are about everything you can think of that has some relation to military service and the law.

I am certainly available to answer questions from employers, but I hear from them only very occasionally. Through the first eight months of 2013, I have received and responded to 6270 inquiries, and only 27 of them (4/10 of 1%) were from employers.

I have been dealing with USERRA and the predecessor reemployment statute for 31 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for DOL as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the interagency task force that President George H.W. Bush presented to Congress, as his proposal, in early 1991. On October 13, 1994, President William Clinton signed into law Public Law 103-353, which was about 85% the same as the Webman-Wright draft. USERRA was a long-overdue rewrite of the Veterans' Reemployment Rights Act (VRRA), which dates from 1940.

I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for 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 ROA's full-time staff as the first Director of the SMLC.

I also invite the reader's attention to www.servicemembers-lawcenter.org. You will find 936 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 add new articles each week. We added 122 new articles in 2012 and another 114 so far in 2013.

[1] The principal point of the evening availability is to encourage RC members to call me from the privacy of their own homes, not from their civilian jobs. When you use the employer's telephone or computer, on employer-paid time, you have no justifiable expectation of privacy. Moreover, if the employer is annoyed with you because you have been called to the colors five times since September 2001 and expect to be called again, and if the employer is looking for an excuse to fire you, the last thing that you should do is give the employer the excuse that he or she is seeking.