

November 2013

DOL Must Comply with USERRA with respect to its own Employees if it is To Be Effective with other Employers

By Captain Samuel F. Wright, JAGC, USN (Ret.)

1.1.1.8—USERRA applies to Federal Government

On November 7, 2013, I sent the following letter to Secretary of Labor Thomas E. Perez concerning the importance of the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the importance of the Department of Labor complying with this law with respect to its own employees:

Honorable Thomas E. Perez
Secretary of Labor
200 Constitution Ave. NW, Room S-2018
Washington, DC 20210

Re: "You gotta practice what you preach"—DOL needs to comply with USERRA with respect to its own employees

Dear Secretary Perez:

I enjoyed attending the 2013 DOL Veterans Day Salute yesterday afternoon. I have probably attended that event at least 20 times over the years. I worked for DOL as an attorney in the Division of Labor-Management Laws, Office of the Solicitor, for a decade (September 1982 to September 1992). I attended every one of those years, and many times in the 21 years since 1992.

I enjoyed your speech at the Salute this afternoon, especially when you said, "You gotta practice what you preach." To quote the Bible, "And why beholdest thou the mote that is in thy brother's eye but considerest not the beam that is in thine own eye?" *Matthew 7:7 (King James Bible)*.

I am writing to bring to your attention that at least one part of DOL (OFCCP) [Office of Federal Contract Compliance Programs] does not practice what DOL preaches, with respect to complying with the Uniformed Services Employment and Reemployment Rights Act (USERRA). I am referring to Ms. Debra Becwar, an Air National Guard member who worked for OFCCP in Milwaukee. She was harassed by OFCCP supervisors concerning her Air National Guard service, and on several occasions she was denied promotions. If you are interested, I can provide you more information about her case.

I have been working the federal reemployment statute for more than 31 years. As you probably know, Congress originally enacted this law in 1940, as part of the Selective Training and Service Act (STSA). The STSA is the law that led to the drafting of millions of young men (including my late father) for World War II. The reemployment statute was colloquially called the Veterans Reemployment Rights Act (VRRA) until the enactment of USERRA in 1994. I developed my interest and expertise in this law during the decade (1982-92) that I worked for DOL as an attorney.

Beginning in 1986, I volunteered to serve on the interagency task force (mostly DOL and DOD) that studied the VRRA with a view toward proposing improvements. 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 early 1991. On October 13, 1994, President William J. Clinton signed into law Public Law 103-353, the long-overdue rewrite of the VRRA. The 1994 version of USERRA was about 85% the same as the Webman-Wright draft.

I have also dealt with USERRA and the VRRA as a judge advocate in the Navy and Navy Reserve, as an attorney 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 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 roughly 800 inquiries per month, by telephone and e-mail, from service members, military family members, attorneys, employers, DOL investigators, ESGR volunteers, congressional staffers, reporters, and others. About half of the inquiries are about USERRA, and the other half are about everything you can think of that has something to do with military service and the law. I also write lots of articles and an occasional *amicus curiae* brief.

I invite your attention to www.servicemembers-lawcenter.org. You will find almost 1000 "Law Review" articles about USERRA, the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find 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 145 so far in 2013. For your convenience, I am enclosing a recent USERRA "Law Review" that may be of interest.

I am here at my post answering calls and e-mails during regular business hours and until 10 pm Eastern on Mondays and Thursdays. The point of the evening availability is to make it possible for National Guard and Reserve members to call me from the privacy of their own homes, not from their civilian jobs. As I am sure that you appreciate, the individual has no justifiable expectation of privacy when using the employer's computer or telephone on employer-paid time. Moreover, if the employer is annoyed with the Reservist or National Guard member because he or she has been called to the colors five times since 2001 and expects to be called up again, and if the employer is looking for an excuse to fire the employee, the last thing that he or she should do is to give the employer such an excuse.

I think that it is so important that Reserve and National Guard personnel call me from home and not from work that I am giving up two evenings per week to take their calls and e-mails during evening hours. ROA is unique in providing this after-hours service. Neither DOL nor ESGR nor any other government agency or military association offers these folks the opportunity to speak to a live human (much less an attorney) after 5 pm local time.

Thank you for your kind attention. I would welcome the opportunity to brief you or appropriate members of your staff about USERRA, the SMLC, and the *Becwar* case. I can come to your office, or we could meet here. We are only two blocks away from you, at 1 Constitution Ave. NE.

Very respectfully,

Samuel F. Wright
Captain, JAGC, USN (Ret.)
Director, Service Members Law Center

Enclosure (copy of recent Law Review article)

Copy to: Honorable Keith Kelly (Assistant Secretary for Veterans' Employment and Training)
Susan M. Webman, Esq.

P.S.: I would welcome the opportunity to provide CLE [Continuing Legal Education] for DOL attorneys and investigators on USERRA. There would be no charge for training at the Frances Perkins Building, and for training elsewhere the only cost to DOL would be for my travel.

