

## **Employers: Please Don't Bother Them in Iraq!**

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**Q:** I am a Marine Corps Reserve lieutenant colonel, recalled to active duty in February 2003 and serving in Iraq. I left a job as a manager of a department for a major corporation. I recently received an e-mail from my immediate supervisor at the corporation, telling me that it was “urgent” that I call him right away. I traveled 100 miles, at considerable risk, to get to a place where I could call him. When I reached him, he told me that the company has held my position open for 18 months and cannot afford to hold it open any longer. He told me that I will be re-employed, but not as a manager.

I damn sure did not need this extra stress right now. I go to bed every night praying that my efforts have been enough. I pray that no Marine will die because I couldn't get something accomplished. I pray that no Marine will die today because I couldn't spend five more minutes stringing wire and emplacing tank traps. I begrudge myself any down time, enjoyment, or personal luxuries, like focusing on my civilian job back home.

I do not know what the company expected me to do or say over the phone. I am in a combat zone, and these guys back home are expecting me to calmly accept that the department I built, the department I trained, is going to be headed up by somebody else and that I get to fall back in the ranks and lose my lead position. What did they expect me to say? What could I say?

I have to run. I am heading out on patrol. I will be hanging off the skid of a Huey doing low-level recon over the local area.

**A:** I have decided to reprint your e-mail verbatim because you make the point so eloquently. Employers: If you are going to communicate with recalled employees in the war zone, please offer support and reassurance. Please do not add to their burdens, as this employer has done.

The whole point of the Uniformed Services Employment and Reemployment Rights Act (USERRA), as well as the Servicemembers' Civil Relief Act (SCRA), is to take these civilian concerns off your mind, so that you can devote your full attention to your military duties. I also invite your attention to Law Review 125, by Capt Charles Baisley, USMC, and particularly to the following sentence: “Indeed, the overarching mission of military legal assistance is to maximize the ‘operational readiness’ of the unit by allowing service members to focus on their duties—not personal concerns half a world away.” Your situation is the best example I can think of in support of Captain Baisley's point.

Please go to ROA's Web site, [www.roat.org](http://www.roat.org). Click on “Legislative Affairs,” then “ROA Law Reviews.” I invite your attention specifically to Law Review 77, titled “I Am Being Demobilized. What about My Civilian Job?” If you meet the USERRA eligibility

criteria, and I am sure that you will meet them, the civilian employer has the *legal obligation* to re-employ you in the position that you would have attained if you had been continuously employed (almost certainly the position you left) or another position of like seniority, status, and pay for which you are qualified.

With regard to “status,” I invite your attention to Law Reviews 8, 79, and 129. It is clear that your employer does not understand USERRA and is planning to re-employ you in a position of lesser status. When you return to CONUS, please call the National Committee for Employer Support of the Guard and Reserve (ESGR) at 1-800-336-4590. ESGR is the DoD organization whose mission is to assist Reserve and National Guard personnel with exactly this sort of problem

The employer is free to fill your position during your absence, but upon your return the employer may be required to displace the replacement in order to accord you your USERRA rights. The fact that the position has been filled does *not* make it “impossible or unreasonable” to re-employ the returning veteran. I invite your attention to Law Review 81.

I hope that you find this information reassuring. You be careful out there.

\*Military title used for purposes of identification only. The views expressed herein are the personal views of the authors and should not be attributed to the U.S. Marine Corps, the Department of the Navy, the Department of Defense, or the U.S. government. The best way to reach Captain Wright is by e-mail, at samwright50@yahoo.com.