

The Reemployment Statute Turns 75

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

1.0—USERRA generally

September 16 marks the 75th anniversary of the Veterans' Reemployment Rights Act (VRRA).³ Congress enacted the VRRA in 1940, as part of the Selective Training and Service Act (STSA)⁴, the law that led to the drafting of more than ten million young men (including my late father) for World War II. Senator Elbert Thomas of Utah conceived of the idea of requiring civilian employers to reemploy those who were drafted. Senator Thomas offered an amendment to that effect during the STSA debate and convinced his colleagues to adopt it. He explained the rationale for his amendment as follows: "[I]t is not unreasonable to require the employers of such men [those who were drafted and necessarily left their civilian jobs] to rehire them upon completion of their service, since the lives and property of employers, as well as the lives and property of everyone else in the United States are defended by such service."⁵

¹ We invite the reader's attention to www.servicemembers-lawcenter.org. You will find almost 1,400 "Law Review" articles about 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. The Reserve Officers Association (ROA) initiated this column in 1997.

² Captain Wright is the author or co-author of more than 1,200 of the almost 1,400 "Law Review" articles available at www.servicemembers-lawcenter.org. He has been dealing with the federal reemployment statute for 33 years and has made it the focus of his legal career. He developed the interest and expertise in this law during the decade (1982-92) that he worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), he largely drafted the interagency task force work product that President George H.W. Bush presented to Congress (as his proposal) in February 1991. On October 13, 1994, President Bill Clinton signed into law the Uniformed Services Employment and Reemployment Rights Act (USERRA), Public Law 103-353. The version that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. Wright has also dealt with the VRRA and USERRA 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, at Tully Rinckey PLLC. For the last six years (June 2009 through May 2015), he was the Director of ROA's Service Members Law Center (SMLC), as a full-time employee of ROA. In June 2015, he returned to Tully Rinckey PLLC, this time in an "of counsel" relationship. To schedule a consultation with Samuel F. Wright or another Tully Rinckey PLLC attorney concerning USERRA or other legal issues, please call Mr. Zachary Merriman of the firm's Client Relations Department at (518) 640-3538. Please mention Captain Wright when you call.

³ The reemployment statute has had many formal names, but it was known colloquially as the VRRA until 1994.

⁴ Public Law 76-783, 54 Stat. 885. The citation means that this was the 783rd public law enacted during the 76th Congress (1939-40), and you can find this enactment in Volume 54 of *Statutes at Large*, starting on page 885.

⁵ 96 Cong. Rec. 10573 (remarks of Sen. Thomas). Quoted in *Leib v. Georgia Pacific Corp.*, 925 F.2d 240, 246 (8th Cir. 1991). The citation means that you can find the *Leib* case in Volume 925 of *Federal Reporter Second Series* and this case starts on page 240. The specific quotation can be found on page 246. The original record of the Senator's statement can be found in Volume 96 of the *Congressional Record* on page 10573.

As originally enacted in 1940, the VRRA only applied to those who were drafted, but just one year later Congress amended the VRRA as part of the Service Extension Act of 1941.⁶ The 1941 amendment expanded the law to make it apply to those who voluntarily enlisted, as well as those who were drafted. Almost from the very beginning, the reemployment statute has applied to voluntary as well as involuntary service, but to this day some employers incorrectly relate the right to reemployment to the draft and assume that those who have volunteered do not have the right to reemployment.⁷

Since 1940, the VRRA has applied to the Federal Government and to private employers. In 1974, as part of the Vietnam Era Veterans Readjustment Assistance Act⁸ (VEVRAA), Congress amended the VRRA to make it apply to state and local governments as well. Today's reemployment statute applies to almost all employers in our country, including the Federal Government, state and local governments, and private employers, *regardless of size*.⁹

On October 13, 1994, President Bill Clinton signed into law the Uniformed Services Employment and Reemployment Rights Act¹⁰ (USERRA) as a long-overdue rewrite of the VRRA. The 1994 law made some significant improvements, but do not think of this law as 21 years old—think of it as 75 years old. I have little patience with employers and employer-side law firms who try to characterize the reemployment statute as something new and unprecedented. In fact, this law has been on the books and has been enforced for $\frac{3}{4}$ of a century and is part of the fabric of our society. This law is important and relevant, now more than ever, because more than 900,000 National Guard and Reserve personnel have been called to the colors since the terrorist attacks of September 11, 2001, the “date which will live in infamy” for our time.

Freedom is not free. The greatest costs are borne by those who serve in our nation's armed forces, especially those in the Reserve Components who leave higher-paying jobs when called up. A small fraction of our country's population bears the lion's share of the cost of freedom. The entire U.S. military establishment, including the National Guard and reserve, amounts to less than three-quarters of 1 percent of the nation's population. It is those service members who have stood between U.S. citizens and a repetition of the terrorist attacks of September 11.

⁶ Public Law 77-213, 55 Stat. 626, 627.

⁷ Of course today all military service is essentially voluntary, because Congress abolished the draft and established the All-Volunteer Military in 1973, almost two generations ago.

⁸ Public Law 93-508, 88 Stat. 1593.

⁹ You only need one employee to be an employer for purposes of this statute. See *Cole v. Swint*, 961 F.2d 58, 60 (5th Cir. 1992). Among employers in the United States, only religious institutions (on First Amendment grounds), Native American tribes (on residual sovereignty grounds), and foreign embassies and consulates and international organizations (on diplomatic immunity grounds) are exempt from USERRA enforcement.

¹⁰ Public Law 103-353, 108 Stat. 3149. USERRA has been amended several times and is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35).

On August 20, 1940, during the Battle of Britain, Prime Minister Winston Churchill said of the Royal Air Force:

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, unwearied 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.

Those eloquent words apply equally to those who serve in the U.S. military today.

So, the reemployment statute aims to guarantee that those who remain at home—enjoying the protection of those few who serve—do not pass those who serve on the escalator of success at work. While civilian employers and civilian coworkers of those who serve in the National Guard or Reserve do bear some costs, those costs are small in comparison to the costs—sometimes the ultimate cost—borne by those who volunteer to serve our nation in uniform.