

Joint Employment Doctrine Under USERRA

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Q: For five years, I have worked for a major defense contractor, but I am employed through an “employment services” firm. My paycheck comes from the employment services firm, but I work exclusively at the facility of the major defense contractor. I receive direction from a supervisor of the contractor on a daily or hourly basis, but I hear from the employment services firm only occasionally. I know of at least nine other employees of the employment services company who work for the defense contractor under the same arrangement.

I am in the Coast Guard Reserve, and my commanding officer has notified me that it is quite likely that I will be called to active duty in the next few weeks. How does the Uniformed Services Employment and Reemployment Rights Act (USERRA) apply to this sort of situation? Who is the employer for USERRA purposes? To whom should I give my notice that I am being called to active duty? When I complete the period of active duty, how should I apply for reemployment?

A: This is a good example of what we refer to as a “joint employer” situation. In Law Review 120 (*The Officer* April 2004) and Law Review 129 (*The Officer* June 2004) I referred to the *VRR Handbook* and the draft *USERRA Handbook*. The draft *USERRA Handbook* says the following about joint employment: “It is entirely possible for an individual to be employed on the same job by more than one employer. For example, a security guard hired by a security company and then sent to a work site will likely report to the security company and the owner of the site. In this instance, both employers share responsibility for compliance with USERRA. If the security company refuses to send the individual to a job because of a uniformed service obligation (for example, National Guard duties), then that company may be held to be in violation of section 4311 [38 U.S.C. 4311]. Likewise, if the employer at the work site had the individual removed from the site because his or her uniformed service obligations were an inconvenience, then the work site employer would be liable.” *USERRA Handbook*, page 20.

In your situation, I suggest that you give notice, in writing and by certified mail, to both the employment services firm and the defense contractor. Send a certified letter to the employment services firm, with a visible “copy to” (not a blind copy) to your supervisor at the defense contractor. Send a certified letter to your supervisor at the defense contractor, with a visible copy to the employment services firm. Likewise, when you complete the period of service you should apply for reemployment, in writing, with both companies. Please see Law Review 77 for a sample application for reemployment letter.

I suggest that you attach a copy of this article and Law Review 77 to each letter. I also invite your attention to Law Review 81.

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